Exhibit A

FORM B10 (Official Form 10) (4/98)

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

PROOF OF CLAIM

Name of Debtor: **Delphi Corp. et al**

Case Number: **05-44481**

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" of payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor: **U.S. Equal Employment Opportunity Commission**

Name and address where notices should be sent:
Margaret A. Malloy
Trial Attorney
U.S. Equal Employment Opportunity Commission
33 Whitehall St.
New York, NY 10004
212-336-3690

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☒ Check box if you have never received any notices from the bankruptcy court in this case.

☐ Check box if the address differs from the address on the envelope sent to you by the court.

COPY

THIS SPACE IS FOR COURT USE ONLY

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR: **NA**

Check here if this claim: ☐ replaces ☐ amends a previously filed claim, dated: _____

1. BASIS FOR CLAIM:
   - ☐ Goods sold
   - ☐ Services performed
   - ☐ Money loaned
   - ☐ Personal injury/wrongful death
   - ☐ Taxes
   - ☒ Other (Describe briefly): **Violation of Americans with Disabilities Act 42 U.S.C. § 12101 *et seq.***
   - ☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)
   - ☒ Wages, salaries, and compensations (fill out below)
     Your SS#: _____
     Unpaid compensation for services performed
     from _____ (date) to _____ (date)

2. DATE DEBT WAS INCURRED: **May 21, 2004**

3. IF COURT JUDGMENT, DATE OBTAINED:

RECEIVED
OCT 18 2007
CLAIMS PROCESSING CENTER
USBC, SDNY

4. TOTAL AMOUNT OF CLAIM AT TIME CASE FILED: **Unliquidated**
   If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.
   ☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. SECURED CLAIM.
   ☐ Check this box if your claim is secured by collateral (including a right of setoff).
   Brief Description of Collateral:
   ☐ Real Estate ☐ Motor Vehicle
   ☐ Other:
   Value of Collateral:
   Amount of arrearage and other charges at time case filed included in secured claim, if any:

6. UNSECURED PRIORITY CLAIM.
   ☒ Check this box if you have an unsecured priority claim
   Amount entitled to priority $ **unliquidated**
   Specify the priority of the claim:
   ☒ Wages, salaries, or commissions (up to $4,000)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3).
   ☐ Contributions to an employee benefit plan - 11U.S.C. § 507(a)(4).
   ☐ Up to $1800* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6).
   ☐ Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).
   ☐ Taxes or penalties of governmental units - 11 U.S.C. § 507(a)(8).
   ☐ Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(__).
   * Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7. CREDITS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.
8. SUPPORTING DOCUMENTS: *Attach copies of supporting documents*, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.
9. DATE-STAMPED COPY: To receive an acknowledgment copy of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

THIS SPACE FOR COURT USE ONLY

RECEIVED
OCT 16 2007
KURTZMAN CARSON

Date: **October 12, 2007**

Sign and print the name and title any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)

Margaret A. Malloy
Trial Attorney

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Exhibit B

United States Bankruptcy Court
Southern District of New York
Delphi Corporation et al. Claims Processing
c/o Kurtzman Carson Consultants LLC, 2335 Alaska Avenue
El Segundo, California 90245

Administrative Expense Claim Request

Debtor against which claim is asserted :
Delphi Corporation, *et al.* 05-444481

Case Name and Number
In re Delphi Corporation., *et al.* 05-44481
Chapter 11, Jointly Administered

NOTE: This form should not be used to make a claim in connection with a request for payment for goods or services provided to the Debtors prior to the commencement of the case. This Administrative Expense Claim Request form is to be used solely in connection with a request for payment of an administrative expense arising after commencement of the case pursuant to 11 U.S.C. § 503.

Name of Creditor
(The person or other entity to whom the debtor owes money or property)

U.S. Equal Employment Opportunity Commission

Name and Address Where Notices Should be Sent

Margaret A. Malloy
U.S. Equal Employment Opportunity Commission
33 Whitehall St.
New York, NY 10004
Telephone No. **212-336-3690**

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
☒ Check box if you have never received any notices from the bankruptcy court in this case.
☐ Check box if the address differs from the address on the envelope sent to you by the court.

THIS SPACE IS FOR COURT USE ONLY

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:
N/A

Check here if this claim ☐ replaces ☐ amends a previously filed claim, dated: _____

1. BASIS FOR CLAIM
☐ Goods sold
☐ Services performed
☐ Money loaned
☐ Personal injury/wrongful death
☐ Taxes
☒ Other (Describe briefly)
Violation of Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*

☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)
☒ Wages, salaries, and compensation (Fill out below)
Your social security number _____
Unpaid compensation for services performed
from _____ (date) to _____ (date)

2. DATE DEBT WAS INCURRED **August 16, 2006**

3. IF COURT JUDGMENT, DATE OBTAINED:

4. TOTAL AMOUNT OF ADMINISTRATIVE CLAIM: $ **Unliquidated**
☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges.

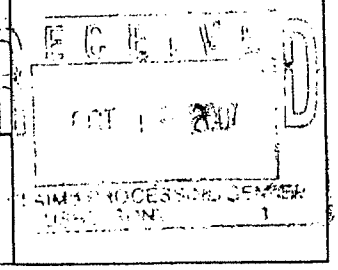
5. Brief Description of Claim (attach any additional information):
EEOC has filed a case in U.S. District Court, WDNY, No. 07-cv-6470, charging Delphi with violating the Americans with Disabilities Act by making prohibited medical inquiries of employees and retaliating against those who object. EEOC seeks monetary and injunctive relief on behalf of a class of employees harmed by the unlawful conduct. This claim covers claims arising after the petition was filed. EEOC is filing a separate proof of claim on behalf of employees harmed prepetition. A copy of the Complaint is attached.

6. CREDITS AND SETOFFS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor.

7. SUPPORTING DOCUMENTS: *Attach copies of supporting documents*, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. Any attachment must be 8-1/2" by 11".

8. DATE-STAMPED COPY: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

THIS SPACE IS FOR COURT USE ONLY



Date
October 12, 2007

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)
Margaret A. Malloy
Trial Attorney

Exhibit C

United States Bankruptcy Court
Southern District of New York
Delphi Corporation et al. Claims Processing
c/o Kurtzman Carson Consultants LLC, 2335 Alaska Avenue
El Segundo, California 90245

Administrative Expense Claim Request

Claim #16753
USBC SDNY
Delphi Corporation, et al.
05-44481 (RDD)

Debtor against which claim is asserted :
Delphi Corporation, *et al.* 05-44481

Case Name and Number
In re Delphi Corporation., *et al.* 05-4448[illegible]
Chapter 11, Jointly Administered

NOTE: This form should not be used to make a claim in connection with a request for payment for goods or services provided to the Debtors prior to the commencement of the case. This Administrative Expense Claim Request form is to be used solely in connection with a request for payment of an administrative expense arising after commencement of the case pursuant to 11 U.S.C. § 503.

RECEIVED
DEC 20 2007
KURTZMAN CARSON

Name of Creditor
(The person or other entity to whom the debtor owes money or property)
U.S. Equal Employment Opportunity Commission

Name and Address Where Notices Should be Sent
Margaret A. Malley
U.S. Equal Employment Opportunity Commission
33 Whitehall St.
New York, NY 10004
Telephone No. 212-336-3690

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
☒ Check box if you have never received any notices from the bankruptcy court in this case.
☐ Check box if the address differs from the address on the envelope sent to you by the court.

THIS SPACE IS FOR COURT USE ONLY

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:
N/A

Check here if this claim ☐ replaces ☐ amends a previously filed claim, dated: _____

1. BASIS FOR CLAIM
☐ Goods sold
☐ Services performed
☐ Money loaned
☐ Personal injury/wrongful death
☐ Taxes
☒ Other (Describe briefly)
Violation of Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*

☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)
☒ Wages, salaries, and compensation (Fill out below)
Your social security number _____
Unpaid compensation for services performed
from _____ (date) to _____ (date)

2. DATE DEBT WAS INCURRED August 16, 2006

3. IF COURT JUDGMENT, DATE OBTAINED:

4. TOTAL AMOUNT OF ADMINISTRATIVE CLAIM: $ Unliquidated
☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges.

5. Brief Description of Claim (attach any additional information):
EEOC has filed a case in U.S. District Court, WDNY, No. 07-cv-6470, charging Delphi with violating the Americans with Disabilities Act by making prohibited medical inquiries of employees and retaliating against those who object. EEOC seeks monetary and injunctive relief on behalf of a class of employees harmed by the unlawful conduct. This claim covers claims arising after the petition was filed. EEOC is filing a separate proof of claim on behalf of employees harmed prepetition. A copy of the Complaint is attached.

6. CREDITS AND SETOFFS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor.

7. SUPPORTING DOCUMENTS: *Attach copies of supporting documents*, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.
Any attachment must be 8-1/2" by 11".

8. DATE-STAMPED COPY: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

THIS SPACE IS FOR COURT USE ONLY

RECEIVED
OCT 18 2007
CLAIMS PROCESSING CENTER
USBC, SDNY

Date
October 12, 2007

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)
Margaret A. Malley
Trial Attorney

0544481071018000000000029

Exhibit D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	
Plaintiff,	**CIVIL ACTION NO.**
-against-	
DELPHI CORP.,	**COMPLAINT** **JURY TRIAL DEMANDED**
Defendant.	

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 ("ADA") and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices and to provide relief to Stanley Straughter ("Charging Party") and to a class of similarly situated individuals who have been adversely affected by such practices. As alleged with particularity below, Defendant Delphi Corp. ("Defendant") violated the ADA by making disability-related inquiries of employees, including Charging Party, for purposes inconsistent with those permitted by the ADA, and by taking adverse employment action against Charging Party and a class of similarly situated individuals in retaliation for and interfering with their exercise of their rights protected by the ADA.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12117(a), which incorporates by reference §§ 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e-5(f)(1) and (3).

2. The unlawful employment practices alleged were committed within the jurisdiction of the United States District Court for the Western District of New York.

PARTIES

3. Plaintiff, Equal Employment Opportunity Commission ("EEOC"), is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1).

4. At all relevant times, Defendant has continuously been a corporation doing business in the State of New York and has continuously employed at least fifteen employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. §§ 2000-e(g) and (h).

6. At all relevant times, Defendant has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

STATEMENT OF CLAIMS

7. More than thirty days prior to the institution of the lawsuit, Charging Party filed a charge with the EEOC alleging violations of Title I of the ADA by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least 2004, Defendant has engaged in unlawful employment practices in violation of Sections 102 and 503 of the ADA, 42 U.S.C. §§ 12112(d)(4)(A) and 12203, as outlined below:

a. Charging Party was employed as a Laborer by Defendant from May 22 to August 17, 2006.

b. On August 14 and 15, 2006, Charging Party called in sick.

c. On August 16, 2006, Charging Party returned to work with a doctor's note verifying that he had been unable to work due to illness on the two days that he was out.

d. Defendant informed Charging Party that he was required to sign an authorization form to allow Defendant to obtain information from Charging Party's personal physician about his medical condition.

e. Charging Party refused to sign the form, stating that he believed the inquiry into his medical condition was unlawful.

f. Defendant informed Charging Party that it was Defendant's policy to check all doctors' notes to verify that the reasons for the absence are acceptable, and that although an employee could refuse to sign the release, the result would be that Defendant would not accept the excuse for the absence.

g. Charging Party asked to take a copy of the form and respond the next day. Defendant consented to this request.

h. Charging Party then modified the form to allow Defendant to verify with his doctor that he had been unable to work on the two days that he was out, but not to discuss his actual medical condition.

i. When Charging Party presented Defendant with the modified form the next day, he was told that it was unacceptable.

j. Charging Party again stated his belief that it was unlawful for Defendant to demand to know his medical information.

k. Defendant immediately fired Charging Party for being "an unsatisfactory temporary employee."

9. The ADA prohibits employers from making inquiries as to whether an employee is an individual with a disability unless the inquiry is shown to be job-related and consistent with business necessity.

10. Defendant's requirement that employees returning from sick leave sign a release of their medical information is a disability-related inquiry that is not job-related or consistent with business necessity.

11. Defendant's requirement that employees returning from sick leave sign a release of their medical information and its practice of disciplining, withholding pay from and/or taking any other adverse employment action against employees who fail to comply with this unlawful policy constitutes coercion, intimidation and/or interference with employees' exercise or enjoyment of their rights under the ADA.

12. Defendant's practice of disciplining, withholding pay from and/or taking any other adverse employment action against employees who refuse to comply with the unlawful policy constitutes retaliation against such employees for engaging in activity protected by the ADA.

13. The effect of the practices complained of above has been to deprive Charging Party and a class of other individuals of equal employment opportunities and otherwise adversely affect their status as employees.

14. The effect of the practices complained of above has been to inflict emotional pain, suffering, and inconvenience upon Charging Party and similarly situated individuals.

15. The unlawful employment practices complained of above were intentional.

16. The unlawful employment practices complained of above are continuing.

17. The unlawful employment practices complained of above were done with malice and reckless disregard for the federally protected rights of Charging Party and similarly situated individuals, in violation of 42 U.S.C. § 12101, *et seq.*

PRAYER FOR RELIEF

Wherefore, EEOC respectfully requests that this Court:

A. Enjoin Defendant, its officers, successors, assigns, and all persons in active concert or participation with it, from making any disability-related inquiries that are not job-related and consistent with business necessity;

B. Order Defendant to institute and carry out policies, practices, and programs that provide equal employment opportunities for qualified individuals with disabilities and that eradicate the effects of its past and present unlawful employment practices;

C. Order Defendant to make whole all those individuals affected by the unlawful employment practices described above, by providing appropriate back-pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary including re-instatement to eradicate the effects of Defendants' unlawful employment practices;

D. Order Defendant to make whole all of those individuals adversely affected by the unlawful employment practices described above by providing compensation for nonpecuniary losses, including pain, suffering, and humiliation in amounts to be determined at trial;

E. Order Defendant to pay all those individuals adversely affected by the unlawful employment practices described above punitive damages for Defendant's malicious and/or reckless conduct in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper.

H. Award the EEOC its costs in this action.

JURY TRIAL DEMAND

EEOC requests a jury trial on all questions of fact raised by this Complaint.

Dated: September 27, 2007

Ronald S. Cooper
General Counsel

James Lee
Deputy General Counsel

Gwendolyn Y. Reams
Associate General Counsel

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
1801 L Street, N.W.
Washington, D.C. 20507

s/Elizabeth Grossman

Elizabeth Grossman
Regional Attorney

s/Judy Keenan

Judy Keenan
Supervisory Trial Attorney

s/Margaret A. Malloy

Margaret A. Malloy
Trial Attorney, U.S. EEOC
33 Whitehall Street, 5th Floor
New York, New York 10004
margaret.malloy@eeoc.gov
Phone 212-336-3690
Fax 212-336-3623

Exhibit E

United States Bankruptcy Court
Southern District of New York
Delphi Corporation et al. Claims Processing
c/o Kurtzman Carson Consultants LLC, 2335 Alaska Avenue
El Segundo, California 90245

Administrative Expense Claim Request

Debtor against which claim is asserted :
Delphi Corporation, *et al.* 05-444481

Case Name and Number
In re Delphi Corporation., *et al.* 05-44481
Chapter 11, Jointly Administered

Claim #16754
USBC SDNY
Delphi Corporation, et al.
05-44481 (RDD)

NOTE: This form should not be used to make a claim in connection with a request for payment for goods or services p to the Debtors prior to the commencement of the case. This Administrative Expense Claim Request form is to be used connection with a request for payment of an administrative expense arising after commencement of the case pursuant U.S.C. § 503.

Name of Creditor
(The person or other entity to whom the debtor owes money or property)
Stanley N. Straughter

Name and Address Where Notices Should be Sent
Stanley N. Straughter / PO Box 19391 / Rochester, NY 14619

Telephone No.
585-581-9166

✓ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
Check box if you have never received any notices from the bankruptcy court in this case.
Check box if the address differs from the address on the envelope sent to you by the court.

THIS SPACE IS FOR COURT USE ONLY

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR: N/A

Check here if this claim replaces amends a previously filed claim, dated: _____

1. BASIS FOR CLAIM
- Goods sold
- Services performed
- Money loaned
- Personal injury/wrongful death
- Taxes
- ✓ Other (Describe briefly)
  Violation of Americans with Disabilities Act, 42 U.S.C. 12101 et seq.

✓ Retiree benefits as defined in 11 U.S.C. § 1114(a)
Wages, salaries, and compensation (Fill out below)
Your social security number 050-72-1779
Unpaid compensation for services performed
from _____ (date) to _____ (date)

2. DATE DEBT WAS INCURRED August 16, 2006

3. IF COURT JUDGMENT, DATE OBTAINED:

4. TOTAL AMOUNT OF ADMINISTRATIVE CLAIM: $ Unliquidated
Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges.

5. Brief Description of Claim (attach any additional information):
I began employment with Delphi Corporation in Rochester, NY on May 22, 2006. On August 14, 2006 and August 15, 2006, I was out of work per my doctor's instructions. I was asked to sign a full medical release limited to the days I was out of work. I refused to sign the release and complained that I felt the inquiry was unlawful. I was terminated immediately on August 17, 2006, in retaliation for opposing an unlawful inquiry under the ADA. I am seeking compensation for lost wages, benefits, pain & suffering, etc.

6. **CREDITS AND SETOFFS**: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor.

7. **SUPPORTING DOCUMENTS**: *Attach copies of supporting documents*, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. Any attachment must be 8-1/2" by 11".

8. **DATE-STAMPED COPY**: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

THIS SPACE IS FOR COURT USE ONLY

RECEIVED
DEC 14 2007
KURTZMAN CARSON CONSULTANTS

Date
December 7, 2007

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)
Stanley N. Straughter

0544481071218000000000029

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form

Charge Presented To: [ ] FEPA [X] EEOC

Agency(ies) Charge No(s): 525-2006-01314

New York State Division Of Human Rights and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)	Home Phone (Incl. Area Code)	Date of Birth
Mr. Stanley Straughter	**(585) 581-9166**	**04-22-1977**

Street Address: **935 Edge Creek Trail, Rochester, NY 14609** — City, State and ZIP Code

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (*If more than two, list under PARTICULARS below.*)

Name	No. Employees, Members	Phone No. (Include Area Code)
DELPHI CORP	**500 or More**	**(585) 647-7000**

Street Address: **P.O. Box 92700, Rochester, NY 14692** — City, State and ZIP Code

Name	No. Employees, Members	Phone No. (Include Area Code)

Street Address: — City, State and ZIP Code

DISCRIMINATION BASED ON (*Check appropriate box(es).*)

[ ] RACE [ ] COLOR [ ] SEX [ ] RELIGION [ ] NATIONAL ORIGIN
[ ] RETALIATION [ ] AGE [ ] DISABILITY [X] OTHER (*Specify below.*)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest	Latest
08-17-2006	**08-17-2006**

[ ] CONTINUING ACTION

THE PARTICULARS ARE (*If additional paper is needed, attach extra sheet(s)*):

I began employment with the above named Respondent on May 22, 2006.

On August 14, 2006 and August 15, 2006, I was out of work per my doctor's instructions. Upon my return to work, I submitted a medical excuse from my doctor. The Respondent asked me to sign a full medical release. I questioned the release because I felt it exceed the permissible scope of medical inquiry for missing two days of work. Under information and belief, the Respondent has a policy of requiring full medical releases from employees when they are out sick. I signed the release, but limited it so that the Respondent could verify the days off and verify that it was due to a medical condition, but not to release my specific condition.

The Respondent then gave me a revised medical release, with language giving them full access to my medical information, but limited only to August 14, 2006 and August 15, 2006. I refused to sign the release and complained that I felt the inquiry was unlawful. I was immediately terminated on August 17, 2006, in retaliation for opposing an unlawful inquiry under the ADA.

I believe the Respondent has a policy and/or practice of making unlawful medical inquiries when employees are out sick, and I was terminated for opposing the unlawful medical inquiry, in violation of Title I of the Americans with Disabilities Act of 1990.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Date — Charging Party Signature

NOTARY – *When necessary for State and Local Agency Requirements*

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (*month, day, year*)

LINDA M. SCHMITT
Notary Public, State of New York
Reg. No. 01SC6095202
Qualified in Monroe County
Commission Expires July 7, 20[illegible]

Exhibit F

Hearing Date and Time: February 29, 2008 at 10:00 a.m.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
333 West Wacker Drive, Suite 2100
Chicago, Illinois 60606
(312) 407-0700
John Wm. Butler, Jr. (JB 4711)
John K. Lyons (IL 4951)
Ron E. Meisler (RM 3026)

- and -

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Four Times Square
New York, New York 10036
(212) 735-3000
Kayalyn A. Marafioti (KM 9632)
Thomas J. Matz (TM 5986)

Attorneys for Delphi Corporation, et al.,
Debtors and Debtors-in-Possession

Delphi Legal Information Hotline:
Toll Free: (800) 718-5305
International: (248) 813-2698

Delphi Legal Information Website:
http://www.delphidocket.com

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
DELPHI CORPORATION, et al.,	:	Case No. 05-44481 (RDD)
Debtor.	:	(Jointly Administered)

DEBTORS' OBJECTION TO UNITED STATES OF AMERICA'S
MOTION FOR LEAVE TO FILE LATE CLAIM

1. Delphi Corporation ("Delphi") and certain of its subsidiaries and affiliates, debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), hereby object (the "Objection") pursuant to Rule 9006 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules"), to the United States Of America's Motion For Leave To File Late Claim (Docket No. 12831) (the "Motion") filed by the United States of America (the "Government"). In support of this Objection, the Debtors submit (i) the Declaration Of Evan Gershbein In Support Of Debtors' Objection To United States Of America's Motion For Leave To File Late Claim, executed and sworn to on February 27, 2008 by Evan Gershbein of Kurtzman Carson Consultants LLC ("KCC"), the noticing agent in these chapter 11 cases (the "Gershbein Declaration"), a copy of which is attached hereto as Exhibit A and (ii) the Declaration Of Dean Unrue In Support Of Debtors' Objection To United States Of America's Motion For Leave To File Late Claim, executed and sworn to on February 27, 2008 by Dean Unrue, the claims administrator for Delphi in these chapter 11 cases (the "Unrue Declaration"), a copy of which is attached hereto as Exhibit B. In further support of this Objection, the Debtors respectfully represent as follows:

Preliminary Statement

2. On August 26, 2006, the Equal Employment Opportunity Commission (the "EEOC") received a call from Stanley Straughter. Mr. Straughter is a former temporary employee hired postpetition who Delphi allegedly terminated on August 17, 2006 for refusing to execute a medical release form to allow a Delphi doctor to confirm with Mr. Straughter's personal physician that he was absent from work due to a medical condition. Jennifer Carlo, an investigator employed by the EEOC, promptly investigated Mr. Straughter's complaint that Delphi violated his rights under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101

et seq., (the "ADA") by reason of this policy. Three weeks later, Ms. Carlo drafted a charge of discrimination which Mr. Straughter reviewed, approved, and filed with the EEOC. The charge of discrimination asserted, among other things, that Mr. Straughter's rights under the ADA were violated due to Delphi's "policy and/or practice of making unlawful medical inquiry when employees are out sick." See Charge of Discrimination, attached as part of Exhibit C to the Declaration of Margaret A. Malloy (the "Malloy Declaration") (Docket No. 12832).

3. It is uncontested that four months earlier, the EEOC was served with the Order Under 11 U.S.C. §§ 107(b), 501, 502, And 1111(a) And Fed R. Bankr. P. 1009, 2002(a)(7), 3003(c)(3), And 5005(a) Establishing Bar Dates For Filing Proofs Of Claim And Approving Form And Manner Of Notice Thereof, entered by this Court on April 12, 2006 (Docket No. 3206) (the "Bar Date Order") setting a bar date of July 31, 2006 (the "Bar Date") for creditors to file proofs of claim in Delphi's chapter 11 cases and, in fact, did not file a timely proof of claim. It is also uncontested that Delphi served substantially all of its employees with the Bar Date Order and, with the exception of Mr. Straughter, not a single employee ever filed a proof of claim asserting that he or she was injured by Delphi's supposedly unlawful medical release policy.

4. Moreover, even though the Government has asserted that the EEOC was not aware of Delphi's allegedly unlawful policy at the time the bar date expired, there is no doubt that the EEOC learned of this policy in September 2006 when Ms. Carlo actively began to work with Mr. Straughter to prosecute his charge of discrimination against Delphi. Notwithstanding this knowledge, the EEOC inexplicably waited until October 2007, almost 13 months later, before filing proof of claim number 16727 (the "Proof of Claim") asserting an unliquidated claim

on behalf of potential employees who were damaged by this policy prior to October 8, 2005 (the "Petition Date") (the "ADA Claim").[1]

5. During this 13-month delay, Delphi undertook a massive claims estimation project to set a limit for asserted trade and other prepetition general unsecured claims (the "EPCA Target") that ultimately evolved into a closing condition that Delphi was required to meet, among other conditions, to obtain funding under a plan of reorganization from a group of outside investors (the "Plan Investors"). Throughout 2006 and into 2007, the EPCA Target was modified to account for progress made during Delphi's expedited claims administration process and to otherwise update claims estimates. In early September 2007, the EPCA Target was finalized at $1.45 billion and incorporated into Delphi's plan of reorganization (the "Plan").

6. Because the EEOC's proof of claim was never filed in the Debtors' chapter 11 cases prior to the setting of the EPCA Target, the Debtors did not consider the EEOC's proof of claim in fixing, or measuring compliance with, the EPCA Target. During the confirmation hearing, Dean Unrue, the Delphi claims administrator, testified that the Debtors were below the EPCA Target by a mere $2 million. Based in part upon Mr. Unrue's testimony, this Court found the Plan was feasible and confirmed the Plan.

7. After Mr. Unrue testified, and one day before this Court entered an order confirming the Plan, the EEOC finally responded to Delphi's month-old request to set a consensual cap regarding the EEOC's late claim until the merits of the claim, including whether the claim should be expunged on timeliness grounds, could be adjudicated in due course. The

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[1] Although the Debtors deny engaging in any illegal conduct under the ADA, to the extent the EEOC is pursuing a claim solely on Mr. Straughter's behalf, the Debtors do not, by this Objection, seek to disallow and expunge such claim on timeliness grounds because Mr. Straughter's claim clearly arose postpetititon and, if valid, would constitute an administrative expense claim not subject to the Bar Date Order. However, in the Proof of Claim, the EEOC is pursuing prepetition claims on behalf of other employees that it alleges were harmed by Delphi's medical release policy prior to the Petition Date. It is this claim that is subject to the Motion and this Objection and which the Debtors are now seeking to have disallowed and expunged.

EEOC informed the Debtors that it could only agree to a cap of $15 million. It based this number on potential damages of $100,000 per employee for 150 Delphi employees allegedly adversely affected by Delphi's sick leave policy. In justifying this number, the EEOC indicated its belief that the number could go even higher, stating that an additional 500 employees could receive similar damages. In its proposal, the EEOC did not, and still has not, identified a single Delphi employee nationwide, other than Mr. Straughter, who even arguably suffered any economic injury due to Delphi's allegedly unlawful policy. The EEOC also stated separately that if Delphi sought to estimate, on a nonconsensual basis, the Proof of Claim in the Bankruptcy Court, the EEOC would file a motion to withdraw the reference to the United States District Court for the Western District of New York. The settlement proposal was in stark contrast to a previous offer made by the EEOC to Delphi to resolve the entire Straughter matter for back pay, $115,000.00 for pain and suffering damages, and establishment of a fund in the amount of $200,000.00 to compensate other similar plaintiffs.

8. Pursuant to this Court's protocol, Delphi filed a notice requiring the EEOC to file a motion for leave to file a late claim. On February 22, 2008, the Government filed the Motion and, in support, submitted a declaration of Margaret Malloy, the EEOC's trial lawyer assigned to the Straughter matter. Surprisingly, the EEOC did not submit a declaration of Ms. Carlo, the EEOC's chief investigator for the Straughter matter and the person at the EEOC with primary knowledge of facts relevant to the Motion. Instead, the EEOC decided to support its request with the declaration of a lawyer who did not even join the EEOC until late December 2006 and first became involved in the Straughter matter sometime in the summer of 2007. See Transcript of February 25, 2006 deposition of Margaret Malloy ("Malloy Dep. Tr."), attached hereto as Exhibit C at 7:23-8:2; 24:10-17. She could not even recall when she became involved in the Straughter matter but placed her involved sometime before May 22, 2007. Id. at 51:12-16.

Thus, she had no first hand knowledge of what the EEOC knew in September 2006 much less why it did not file a proof of claim when it received the charge of discrimination. Moreover, based upon instruction of her counsel, she generally refused to answer questions regarding facts set forth in her declaration, including whether the EEOC knew whether any Delphi employee, other than Mr. Straughter and three other reprimanded employees (each of whom only received written reprimands but were not fired), actually suffered economic injury by reason of Delphi's supposedly unlawful medical release policy. Id. at 30:3-19; 31:23-32:3; 66:13-65:3. Thus, because Ms. Malloy has no personal knowledge of the underlying facts during the relevant time period or, alternatively, refused to answer questions concerning potentially relevant facts, the EEOC has failed to submit credible, probative evidence in support of its Motion, thus warranting denial. Id. at 21:19-25; 29:22-30:14; 31:17-32:4; 33:6 -12; 36:13-24; 49:15-20; 51:22-53:9; 56:13-57:2; 61:7-18.

9. Moreover, even if the Government's evidentiary submissions are considered by the Court, it still cannot demonstrate excusable neglect under the Pioneer factors. First and foremost, the Government has not provided any rational explanation why the EEOC waited over 13 months after learning of Delphi's supposedly unlawful policy before filing a proof of claim. Ms. Malloy offers no reason in her declaration and, when asked at deposition why the EEOC waited 13 months to file its proof of claim, her lawyer instructed her not to answer on the grounds that such information could not be divulged because of privilege. Id. at 49:15-20.[2] Furthermore Ms. Malloy confirmed that filing a proof of claim on behalf of the EEOC could have been done at any time and did not require levels of internal approval or any other lengthy authorization. Id. at 34:6-35:7. Thus, the ability to file a proof of claim was

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[2] At Ms. Malloy's deposition, the EEOC's counsel made a standing instruction to the wtiness not to answer questions when he objected to a question on the basis of a privilege. Id. at 13: 9-17.

clearly within the EEOC's control. For unknown reasons, it waited until October 2007 to finally file the Proof of Claim.

10. Second, the Debtors suffered prejudice as a result of the delay. Because the Proof of Claim was not promptly filed, the Debtors were unable to build in the asserted amount of the Proof of Claim into the EPCA Target and, if necessary, adjust the EPCA Target if claims litigation was unsuccessful in reducing or disallowing the EEOC's claim. Although the Debtors believe the EEOC's potential estimate of its claim is baseless, the size of the EEOC's asserted estimate underscores the prejudice to the Debtors if the Motion is granted.

11. Third, the length of the delay and impact on Delphi's judicial proceedings further dictates denial of the Motion. As stated above, during the 13-month delay, the Debtors set the EPCA Target and prosecuted claims objections to meet the stringent requirements imposed under the agreements with the Plan Investors. If the Motion is granted, not only could it erode the progress the Debtors have achieved since confirmation to further reduce claims below the EPCA Target, but it could open the floodgates to other late claims that could jeopardize compliance with the EPCA Target and, accordingly, the Debtors' emergence from chapter 11.

12. Finally, the timing of the filing of the proof of claim, the EEOC's disproportionate response to the Debtors' request to consensually cap the EEOC's unliquidated claim, and its threat to further delay adjudication of the claim by seeking to withdraw the reference if this Court tries to estimate the EEOC claim, allows this Court to draw its own inference regarding whether the EEOC is acting in good faith in prosecuting the Motion. For the reasons set forth herein, the Motion should be denied and the Proof of Claim disallowed and expunged.

Background

13. On April 12, 2006, this Court entered the order (Docket No. 3206) establishing the Bar Date.

14. On April 20, 2006, KCC served copies of the Bar Date Notice on a comprehensive list of individuals and entities. Specifically relevant to the ADA Claim, KCC served the Bar Date Notice on the EEOC via U.S. mail at the address below, which is the address of the EEOC set forth in the Complaint:

EEOC
1801 L St. NW
Washington, D.C. 20507

Gershbein Declaration at ¶4. KCC also served the Bar Date Notice on the U.S. Attorney for the Southern District of New York via U.S. mail at the address below:

David N. Kelly USA
US Attorney S District Of NY
One St. Andrews Plaza
New York, NY 10007

Id. at ¶ 4. Finally, among the parties upon whom KCC served the Bar Date Notice were substantially all Delphi employees. Unrue Declaration at ¶¶ 4-6; Gershbein Declaration at ¶ 5.

15. By the July 31, 2006 Bar Date, neither the EEOC nor any Delphi employee filed a claim that asserted the allegedly discriminatory conduct set forth in the ADA Claim.

16. On August 17, 2006, Mr. Straughter, a temporary employee who was hired by Delphi on May 22, 2006, was terminated. See Malloy Declaration at ¶¶ 4-8. On September 22, 2006, Mr. Straughter filed a charge of discrimination with the EEOC. Id. The EEOC did not file a proof of claim on account of the ADA Claim until approximately 13 months later, on October 17, 2007.

17. Over 16,000 proofs of claim were timely filed by the Bar Date. Together with scheduled liabilities for which no proof of claim had been filed, these proofs of claim asserted more than $36 billion in liquidated amounts plus certain unliquidated amounts.

18. Throughout the summer and fall of 2006, the Debtors were heavily involved in framework discussions with their key stakeholders to come to an agreement on a plan for the Debtors' emergence from chapter 11. See Unrue Declaration at ¶ 10. It became apparent that the Debtors' ability to consummate a framework agreement, and obtain necessary funding from outside investors, was predicated upon a clear understanding of the scope of the general unsecured claims that would ultimately be allowed in these cases. Id. To that end, in October and November 2006, the Debtors began a massive internal claims estimation effort to gauge the scope and amount of general unsecured claims anticipated at emergence from chapter 11 and devised detailed claims administration procedures to efficiently and expeditiously adjudicate disputed and unliquidated claims. Id.

19. On December 18, 2006, the Debtors announced their execution of an equity purchase and commitment agreement with the Plan Investors and a plan framework support agreement with those investors and General Motors Corporation, both of which contained the EPCA Target, a limit on trade and other unsecured claims that could not be exceeded as a condition to plan funding. Id. at ¶ 11.

20. The Debtors then began an extensive claims administration process designed to expeditiously reduce the claims pool to meet the EPCA Target, filing 27 omnibus claims objections to date. Id. at ¶ 12.

21. Throughout late 2006 and into 2007, the EPCA Target was modified to account for progress made during Delphi's expedited claims administration process and to

otherwise update claims estimates. Id. at ¶ 13. In early September 2007, the EPCA Target was finalized at $1.45 billion and incorporated into Delphi's plan of reorganization (the "Plan"). Id.

22. On September 28, 2007, without leave of this Court, the EEOC filed a complaint against Delphi in the United States District Court for the Western District of New York alleging violations of the ADA based on Mr. Straughter's charge of discrimination and on behalf of Mr. Straughter and other unidentified Delphi employees (the "Complaint"). On October 18, 2007, also without leave of this Court, and 15 months after the Bar Date and at least 13 months after the EEOC knew of the ADA Claim, the EEOC filed the Proof of Claim, attaching a copy of the Complaint. The Debtors objected to the ADA Claim on October 26, 2007 (Docket No. 10738).

23. As early as November 20, 2007, however, counsel for the Government and the Debtors began to discuss a possible resolution of the Debtors' objection to the ADA Claim, including capping the ADA Claim. On January 24, 2008, counsel for the Government sent counsel for the Debtors an email indicating that the EEOC would not agree to cap the ADA Claim in an amount less than $15 million.

24. This was in stark contrast to the Government's previous offer to Delphi eight months earlier to settle the matter at a fraction of the proposed $15 million amount. By letter dated May 23, 2007, a copy of which is attached as Exhibit N to the Malloy Declaration, the EEOC initially made Delphi an offer of conciliation to settle the Straughter matter, which offer included, among other things, (a) back pay for Straughter, (b) $115,000.00 for "emotional distress, pain, suffering, humiliation or embarrassment", and (c) the creation by Delphi of a $200,000.00 fund to provide compensation for other Delphi employees affected by Delphi's allegedly discriminatory conduct. Delphi did not accept the EEOC's offer.

25. On January 25, 2008, this Court entered an order (Docket No. 12359) confirming the Plan. The effectiveness of the Plan is contingent on, among other things, satisfaction of the EPCA Target.

Argument

A. The EEOC Was Properly Served With And Is Presumed To Have Received The Bar Date Notice

26. The EEOC does not contest, nor could it, that KCC served the Bar Date Notice on both the EEOC and the U.S. Attorney for the Southern District of New York. Gershbein Declaration at ¶ 4. Even if it did, there is a presumption that the EEOC was properly served with the Bar Date Notice by KCC's confirmation that it mailed the Bar Date Notice to both parties. See Hagner v. U.S., 285 U.S. 427, 430 (1932) ("proof that a letter properly directed was placed in a post office creates a presumption that it reached its destination in usual time and was actually received by the person to whom it was addressed"); In re Mid-Miami Diagnostics, L.L.P., 195 B.R. 20, 22 -23 (Bankr. S.D.N.Y. 1996) ("A creditor's denial of receipt, standing alone, does not rebut the presumption that the mail was received, but merely creates a question of fact."). "While the presumption [of receipt] is a rebuttable one, it is a very strong presumption and can only be rebutted by specific facts and not by invoking another presumption and not by a mere affidavit to the contrary." In re Dana Corp., No. 06-10354, 2007 WL 1577763, *4 (Bankr.S.D.N.Y. May 2007). The Government has failed to present any objective evidence to rebut this presumption.

27. Because the EEOC is presumed to have received the Bar Date Notice, it was obligated to follow the procedures referenced therein to file a proof of claim, or risk having

its claim barred. The EEOC did not file the Proof of Claim before the Bar Date,[3] and it should not be granted an extension of the Bar Date.

B. The Government Has Not Met Its Burden Of Proof For Establishing Excusable Neglect Under Bankruptcy Rule 9006(b)

28. Because the EEOC is presumed to have received the Bar Date Notice, the EEOC can file the untimely Proof of Claim only if the Government meets its burden to establish excusable neglect. See In re R.H. Macy & Co., Inc., 161 B.R. 355, 360 (Bankr. S.D.N.Y. 1993) ("the burden of proving 'excusable neglect' is on the creditor seeking to extend the bar date"). The Government cannot meet this burden.

29. The United States Supreme Court has outlined factors to be considered in determining whether there is excusable neglect on the part of the moving party, which includes: "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395 (1993). The Second Circuit applied the factors set forth in Pioneer and noted that "reason for the delay" is the most important factor in the analysis. Midland Cogeneration Venture Ltd. P'ship v. Enron Corp. (In re Enron Corp.), 419 F.3d 115, 123 (2d Cir. 2005). The Second Circuit has also noted that, under the Pioneer standard, "'the equities will rarely if ever favor a party who fails to follow the clear dictates of a court rule' and 'that where the rule is entirely clear, we continue to expect that a party claiming excusable neglect will, in the ordinary course, lose under the Pioneer test.'" Id. (quoting Silivanch v.Celebrity Cruises, Inc., 333 F.3d 355, 366-67 (2d Cir. 2003)). Here, the EEOC's alleged

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[3] As noted above, the EEOC filed proof of claim number 14821, on the Bar Date, which asserted a completely different claim than the ADA Claim. Filing a proof of claim on the Bar Date suggests that the EEOC was in fact served, and had knowledge of, the Bar Date.

reason for its delay – that it did not know of the existence of the ADA Claim until after the Bar Date and that it took 13 months to investigate the claim – does not warrant a departure from the Second Circuit's strict approach. The EEOC waited at least 13 months after it knew of the ADA Claim to file the Proof of Claim and the employees on whose behalf the ADA Claim is asserted knew, or should of known, of the ADA Claim well before the Bar Date. This delay, including the EEOC's failure to adequately explain the delay, coupled with the other Pioneer factors, including the prejudice to the Debtors, weighs heavily against permitting EEOC to file a late proof of claim.

(i) The EEOC's Alleged Lack Of Knowledge Of The ADA Claim Does Not Constitute Excusable Neglect

30. The Government asserts that the reason for the EEOC's delay in filing the Proof of Claim was that the EEOC did not know about the existence of the ADA Claim until after the Bar Date. See Motion at 2. Although the Government asserts that the EEOC exercised "efficient and diligent prosecution of its claims," it has not, however, provided factual support to justify the EEOC's 13-month delay. Further, the employees on whose behalf the Complaint and Proof of Claim were filed had, or should have had, knowledge of the claim at the time the conduct giving rise to such claim occurred, which would have been well in advance of the Bar Date. To allow the EEOC to pursue a recovery on behalf of employees who themselves knew of the claims but missed the Bar Date would be to circumvent the policy behind the Bar Date with respect to these employees by rewarding their failure to file a claim with a chance at recovery simply because the EEOC did not know about the existence of a claim.

31. As noted above, the most important Pioneer factor in determining excusable neglect is the reason for the delay. See Midland, 419 F.3d at 123. Even assuming that the EEOC's lack of knowledge of the ADA Claim is a valid reason for delay – which, as

explained in further detail below, the Debtors dispute – the Government has not provided a valid explanation for the EEOC's 13-month delay after it had knowledge of the ADA Claim. Instead, the Government asserts that the EEOC was engaged in "efficient and diligent prosecution of its claims" and suggests that the Debtors are partially responsible for the EEOC's delay by not timely responding to the EEOC's information requests.

32. However, even though it has the burden to prove excusable neglect, the only factual support submitted by the Government to support its allegations is the declaration of an EEOC lawyer, Ms. Malloy, who was not involved in the Straughter matter until sometime in the summer of 2007. See Malloy Dep. Tr. at 7:23-8:2; 24:10-17; 51:12-16. Because Ms. Malloy has no personal knowledge of what occurred prior to her involvement in the summer of 2007, the Government has provided no factual support to account for at least the first eight months of the EEOC's delay. Furthermore, when asked point-blank to explain the 13-month delay, the Government – again, the party with the burden of proof – has refused to provide a sufficient explanation, but rather has hid behind privileges. Id. at 49:15-20.

33. Ms. Malloy did, however, confirm that the EEOC could have filed a proof of claim while it was completing its lengthy investigation of Mr. Straughter's allegations. Id. at 34:6-35:7. Indeed, Ms. Malloy testified that no extraordinary approvals were needed within the EEOC, or any other part of the Government, to file such a proof of claim and that the EEOC's investigation protocols did not need to be completed to file a proof of claim. Id. But again, even though the Government has the burden of proof, Ms. Malloy refused to explain why the EEOC failed to file such a claim until 13 months after discovering Delphi's supposedly unlawful medical release policy.

34. In analyzing the reason (or lack thereof) for the EEOC's delay in the context of the Pioneer factors, a recent unpublished Enron decision is instructive. In that case, a

creditor, with a claim based upon a guaranty executed by the debtor, sought leave to file a proof of claim approximately 20 months after the bar date. In re Enron Corp., 2007 WL 294114, *2 (Bankr. S.D.N.Y. 2007). The creditor asserted that its failure to timely file a claim was the result of its inability to verify that the guaranty had actually been executed by the debtor, that the creditor worked diligently to find an executed copy of the guaranty but was unable to do so until well after the bar date, and that the debtor added to the delay by refusing to provide an executed copy of the guaranty. Id. The court, however, held that the creditor did not satisfy the excusable neglect standard. Id. at *7. In so holding, the court noted that the debtor was not obligated to assist the creditor in finding a copy of the guaranty and that the creditor could have sought the intervention of the court if it believed the debtor was not properly responding to the creditor's inquiries. Id. at *6. In addition, the court noted that the creditor could have simply filed a proof of claim without attaching an executed copy of the guaranty and explained why the executed copy was missing. Id.

35. Here, the Government offers no explanation for the EEOC's failure to file a protective proof of claim while it completed its investigation, though Ms. Malloy admitted that filing a proof of claim was within the reasonable control of the EEOC and it could have done so without extraordinary approvals within the EEOC. Malloy Dep. Tr. at 34:6-35:7. In addition, although the Debtors maintain that they acted properly during the EEOC's investigation, just as the court in the Enron decision noted with respect to the creditor in that case, the EEOC could have sought relief from this Court if it believed that the Debtors were not properly and timely responding to its information requests in conjunction with its investigation. The EEOC did not make such a request. As the Enron decision illustrates, the Government's unsupported argument that the Debtors somehow caused the EEOC's delay does not meet the excusable neglect standard.

36. In the Motion, the Government suggests that not allowing the EEOC to file an untimely claim would put the EEOC "on the horns of a dilemma" because it would be forced to choose between filing a discrimination charge prior to a full investigation or not file a charge at all. See Motion at 18. The Government's argument misses the point. As Ms. Malloy admitted, the EEOC could have filed a proof of claim prior to the completion of its supposed "full-blown investigation". Malloy Dep. Tr. at 34:6-35:7. Indeed, bar dates, by their very nature, necessarily put some creditors in the difficult position of having to quickly figure out what claims they may have and how they need to protect themselves, and claimants often file unliquidated and/or contingent claims to protect their rights even though they may not yet have all the information relevant to their claims, as the Debtors have experienced first-hand in these cases.[4] The EEOC is no different than any of these other creditors, even if it is required by its own internal regulations to follow certain investigative protocol prior to filing an actual complaint asserting discrimination. The EEOC could have filed a protective proof of claim during the 13 months after it learned of the ADA Claim, but chose not to, and has provided no justification for that choice. See In re Calpine Corp., 2007 WL 4326738, *6-7 (S.D.N.Y. 2007) (finding that a delay of over six months in filing claims after bar date not result of excusable neglect and noting that the claimants "had the ability to . . . file supplemental Proofs of Claim at any time and have not offered any explanation as to why no such supplements were filed until such a late date."); In re Northwest Airlines Corp., 2007 WL 498285, *3 (Bankr. S.D.N.Y. 2007) ("[Movant] cannot properly ground its excusable neglect argument on the fact that it conducted

[4] The Debtors note that the Bar Date was approximately 10 months after the Petition Date and only approximately four months after the Bar Date Notice was served, and thus all creditors had less than 13 months to complete their investigation and diligence, but most still managed to timely file claims.

an investigation and tried to resolve the issue by good faith negotiations. All of this can be done after a filing is first made and rights are preserved.").

37. Furthermore, the cornerstone of the Government's argument – that the EEOC did not have knowledge of the ADA Claim until after the Bar Date – is undermined by the fact that the employees who did have knowledge of a claim (to the extent one existed) did not file proofs of claim. Because the injunctive relief sought in the Complaint is prospective, it has no bearing on, and, indeed, cannot be satisfied through, the Proof of Claim,[5] and thus the compensatory relief for alleged prepetition violations of the ADA is the only relief relevant to the Proof of Claim. But, all employees on whose behalf this compensatory relief is sought would have had knowledge of a claim at the time such discriminatory conduct occurred, and, to preserve their rights to assert such a prepetition claim against the Debtors' estates, were obligated to file a proof of claim regardless of whether the EEOC had knowledge of the claim. See O'Loghlin v. County of Orange, 229 F.3d 871, 874 (9th Cir. 2000) (holding that employee's ADA claim based on prepetition conduct was discharged in bankruptcy where employee failed to file proof of claim, even though employee never received right to sue letter from EEOC) (citing McSherry v. Trans World Airlines, Inc., 81 F.3d 739, 741 (8th Cir.1996)).

38. Because no employee filed a prepetition proof of claim arising from the same set of facts as the ADA Claim,[6] the employees adversely affected by Delphi's allegedly illegal conduct are barred from asserting an ADA claim against the Debtors based upon prepetition conduct. To allow the EEOC to file an untimely proof of claim on behalf of these

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[5] By their objection to the Proof of Claim, the Debtors are not seeking to cutoff any claim to injunctive relief, nor any other postpetition claim, that the EEOC holds. Although the Debtors dispute the merits of any such claims, by this Objection they are seeking to expunge the prepetition Proof of Claim only.

[6] Slaughter, the charging employee who initiated the ADA Claim, was not hired until after the Petition Date, and thus any claim that he holds did not arise prepetition.

employees, and recover compensatory damages directly for the benefit of such employees, on the grounds that the EEOC did not know about the ADA Claim, would allow the employees to circumvent the Bar Date by recovering, through the EEOC, on account of claims for which they are individually barred from asserting. See E.E.O.C. v. Jefferson Dental Clinics, PA, 478 F.3d 690, 696-99 (5th Cir. 2007) (distinguishing between the EEOC's role when it seeks injunctive relief versus monetary relief and holding that res judicata precludes EEOC from recovering monetary damages on behalf of employee who previously lost individual state court discrimination case).[7]

39. The Government relies on Lone Star Inds. v. Rankin County, Miss. Bd. of Supervisors (In re New York Trap Rock Corp.), 153 B.R. 642 (Bankruptcy S.D.N.Y. 1993) for the proposition that its alleged lack of knowledge of the ADA Claim excuses it from filing a timely proof of claim. Contrary to the Government's assertions, Lone Star is inapposite. In that case, the government asserted a claim against the debtor for cleanup and response costs under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") as a result of prepetition environmental contamination by the debtor. Id. at 644. Neither the Debtor

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[7] The Debtors acknowledge the Supreme Court's decision in E.E.O.C. v. Waffle House, Inc., 534 U.S. 279 (2002) and its limited holding that an arbitration agreement between an employee and employer does not preclude the EEOC from pursuing victim-specific monetary relief on behalf of such employee. See also E.E.O.C. v. Sidley Austin LLP, 437 F.3d 695, 696 (7th Cir. 2006) (relying on Waffle House and holding that EEOC was not precluded from pursuing monetary damages on behalf of employees barred from bringing their own suits). However, as acknowledged by the Supreme Court in its ruling, "The only issue before this Court is whether the fact that [the individual employee] has signed a mandatory arbitration agreement limits the remedies available to the EEOC." Id. at 297. Accordingly, Waffle House, which relied on part in the lack of privity of contract between the EEOC and an employer who signs an arbitration agreement with its employee, does not address the issue presented here. Additionally, because of the unique factual circumstances presented in the bankruptcy context, only prepetition claims are affected by the Bar Date, and any remedy of the EEOC with respect to postpetition conduct, including injunctive relief, is unaffected. Also, the fresh start policy underlying the Bankruptcy Code is unique to the bankruptcy context and was not present in the Waffle House or any other non-bankruptcy decision relying on Waffle House. A debtor's ability to understand its prepetition claim and emerge from bankruptcy with a fresh start requires that it not be subject to late claims filed by the government on behalf of claimants that the debtor believed were otherwise barred by the bar date. Accordingly, the Debtors believe that the limited holding of Waffle House is not applicable.

nor the government knew of the contamination until after the bar date. Id. 647. The court held that the government's lack of knowledge of its claim may constitute excusable neglect. Id. However, a CERCLA claim is much different than an ADA claim and thus Lone Star is not analogous to the issue at bar. A CERCLA claim is based on environmental contamination that, by its very nature, is difficult to detect at the point at which a claim arises because the contamination usually occurs underground. Not so with an ADA claim. As noted above, an employee adversely affected by unlawful employer conduct will known of his claim at the time of such conduct. Accordingly, the Lone Star court's analysis of an environmental claim is not applicable to a discrimination claim, and Lone Star has little precedential value.

40. More importantly, however, the bankruptcy court, in a separate opinion deciding the same matter, held that the claimant in Lone Star did not meet the excusable neglect standard because, like the EEOC here, it waited to long to file its late claim. See In re New York Trap Rock Corp., 153 B.R. 648 (Bankr. S.D.N.Y. 1993). The court noted that the government waited nine months until after it knew of the existence of the oil contamination to file its CERLCA claim and found that "the delay in filing the proposed claim since May and June of 1992, when the [government] first acquired actual notice of the potentially hazardous condition, was solely within the [government's] control." Id. at 653. The court held that "[t]his delay is inexcusable." Id. Here, the EEOC waited 13 months after it knew of the ADA Claim to file the Proof of Claim. Therefore, even if the first opinion in Lone Star supports the Government's argument that the EEOC's lack of knowledge excuses its failure to meet the Bar Date, the later decision squarely negates the EEOC's request for relief because the EEOC waited 13 months after it learned of the ADA Claim to file the Proof of Claim.

(ii) The Debtors Would Be Prejudiced By Allowing The EEOC To File A Late Claim

41. Allowing the EEOC to file the Proof of Claim will prejudice the Debtors. Although the EEOC's proposed claim itself may be only one of thousands, allowing the EEOC to file the Proof of Claim may inspire many other similarly situated potential claimants to file similar motions and thus would unfairly impede the Debtors' ability to meet a condition to its emergence from chapter 11 pursuant to the confirmed Plan. Courts have often looked primarily to concerns about opening the floodgates to similar late-filed claims as a reason not to allow late claims. See, e.g., In re Enron Corp., 419 F. 3d 115, 132 (2d Cir. 2005); In re Kmart Corp., 381 F.3d 709, 714 (7th Cir. 2004) (noting that if court allowed all similar late-filed claims, "Kmart could easily find itself faced with a mountain of such claims"); Enron Creditors Recovery Corp., __ B.R. __, 2007 WL 1705653, at *10-11 (Bankr. S.D.N.Y. June 13, 2007) ("It can be presumed in a case of this size with tens of thousands of filed claims, there are other similarly-situated potential claimants. . . . Any deluge of motions seeking similar relief would prejudice the Debtors' reorganization process." (citation omitted)); In re Dana Corp. 2007 WL 1577763, *6 (Bankr.S.D.N.Y. 2007) ("the floodgates argument is a viable one").

42. As stated above, in October and November 2006, the Debtors began a massive internal claims estimation effort to gain an understanding of the scope and amount of the general unsecured claims filed against the Debtors, which would be necessary for the Debtors to obtain funding from outside investors and emerge from chapter 11. See Unrue Declaration at 12. In the year and a half since the Bar Date and the 15 months since the commencement of the internal claims estimation effort, the Debtors have achieved great progress towards achieving the EPCA Target. Id. at 14.

43. Had the EEOC filed its untimely unliquidated Proof of Claim a year earlier, when it first acquired actual notice of an alleged violation from Mr. Straughter's formal executed complaint against Delphi, the Debtors would have been able to include the Proof of Claim in its internal claims estimation process and factor the unliquidated Proof of Claim into its calculation of the EPCA Target. Id. at 15. Opening the door to late unliquidated claims such as the EEOC's, after the EPCA Target has been relied upon by all those with a stake in the negotiations that allowed the Debtors to confirm its Plan, would erode progress the Debtors have made in further reducing claims below the EPCA Target and could threaten the Debtors' ability to emerge from chapter 11. Id.

(iii) The Good Faith Factor

44. As stated above, the timing of the filing of the proof of claim, the EEOC's disproportionate response to the Debtors' request to consensually cap the EEOC's unliquidated claim, and its threat to further delay adjudication of the claim by seeking to withdraw the reference if this Court tries to estimate the EEOC claim, allows this Court to draw its own inference regarding whether the EEOC is acting in good faith in prosecuting the Motion The good faith of the moving party is an additional Pioneer factor. See Midland, 419 F.3d at 123.

Conclusion

45. The Government seeks to allow the EEOC to maintain its late proof of claim without having satisfied any of the grounds for relief from the Bar Date Order. Relief under Bankruptcy Rule 9006(b) is not available to the EEOC. Accordingly, the Motion should be denied.

Memorandum Of Law

46. Because the legal points and authorities upon which this Objection relies are incorporated herein, the Debtors respectfully request that the requirement of the service and

filing of a separate memorandum of law under Local Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York be deemed satisfied.

WHEREFORE the Debtors respectfully request that this Court enter an order (a) denying the Motion, (b) disallowing and expunging the Proof of Claim, and (c) granting them such other and further relief as is just.

Dated: New York, New York
February 28, 2008

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Attorneys for Delphi Corporation, et al.,
Debtors and Debtors-in-Possession

Exhibit G

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481

- -x

In the Matter of:

DELPHI CORPORATION, ET AL.,

Debtors.

- -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

February 29, 2008

10:07 a.m.

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

MOTION for Approving Patent License Settlement with Denso Corporation

CLAIM Objection Hearing Regarding Claim of Furukawa Electric Co. Ltd.

MOTION of Equal Employment Opportunity Commission for Leave to File Late Proof of Claim

Transcribed By: Esther Accardi

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MARGARET MALLOY, ESQ., EEOC

P R O C E E D I N G S

THE COURT: Please be seated. Okay. Delphi Corporation.

MR. LYONS: Good morning, Your Honor. John Lyons on behalf of the debtors.

THE COURT: Good morning.

MR. LYONS: This is our twenty-first claims hearing. And, Your Honor, and we have one contested matter today. We have two other matters that I'd like to take first, though. They're handled by Togut Segal and they involve some compromises at compromised motions.

THE COURT: Okay.

MR. WINCHELL: Good morning, Your Honor. Andy Winchell for Togut Segal & Segal, LLP, on behalf of the debtors. The first item on the agenda this morning is a motion to approve for patents -- license settlement agreement with Denso Corporation. This arises out of the claims context because Denso filed three claims, claims 12339, 12340, 12341, for alleged patent infringement. Each claim was in the amount of 697,778 dollars. One claim against DAS, LLC, one against Delphi Corporation, and one against Delphi Technologies.

Your Honor, the settlement was arguably in the ordinary course of business, but we, out of an abundance of caution decided to bring this motion, give all parties an opportunity -- some notice, and a chance to inquire about the

terms of the settlement. We did receive one inquiry about the settlement, that was from the creditors' committee, it came a couple of weeks ago. FTI responded and the creditors' committee is now supportive of the settlement, so they did not end up filing any objection.

After the filing of these three claims, there was approximately a year/year and a half worth of arms length negotiations between sophisticated parties, representing by competent counsel, Melissa Vongtama of Blank Rome is here representing Denso. The result of this, had a license settlement agreement, which we filed under seal, pursuant to your order.

There are two remaining provisions of the settlement agreement, one of which is obviously the withdrawal of the three claims, that's not confidential at all. The rest of the settlement agreement contains highly sensitive pricing information which is confidential and therefore we filed it under seal.

THE COURT: Because it's essentially the patent license.

MR. WINCHELL: Absolutely, Your Honor. But otherwise, Your Honor, we consider this in the best interest of the estate and request it be approved.

THE COURT: I reviewed the license, and I was going to ask you but you've already told me, the creditors' committee

considered it also.

MR. WINCHELL: Yes.

THE COURT: So in light of that and there being no objections, I'll approve the settlement. As you noted also,it includes approval of the license agreement.

MR. WINCHELL: Thank you, Your Honor.

THE COURT: Okay.

MR. WINCHELL: And the second item, Your Honor, is the claims objection hearing regarding the claim of Furukawa Electric. This is a purely housekeeping matter. The claim was superseded -- opposing counsel confirmed to us on Wednesday that the claim should be expunged as being superseded. We have that with an e-mail they transmitted to us. They're not here. They did not want to go through the effort of having a stipulation, they just intend to have us proceed.

THE COURT: Okay. So how's that going to be memorialized, do you have an order on that?

MR. WINCHELL: We'll have an order on that, yes.

THE COURT: Okay. Fine. Then, I'll sign that when you give it to me, the claim is conceded -- duplicate of -- superseded by subsequent proof of claim.

MR. WINCHELL: Very good. Thank you, Your Honor.

THE COURT: Okay.

MR. LYONS: Your Honor, the third item on the agenda is the contested matter. And that's the motion of the Equal

Opportunity Commission for a leave to file a late proof of claim. I'll yield the podium to the United States.

THE COURT: Okay.

MR. SCHWARTZ: Good morning, Your Honor. Matthew De l e Schwartz for the United States of America. We're here for a hearing on the United States' motion for leave to file a late claim, that's the claim of the Equal Employment Opportunity Commission. At the outset, I would like to ask that this hearing be adjourned to a time next week. We were served with Delphi's papers yesterday morning. I have personally been on trial before Judge Stein since the beginning of the month, concluding yesterday, and so was not able to turn to the papers until after that. I don't think that we've had adequate time to review them. I would like to put in a response, especially in view of the fact that Delphi's papers implicates serious evidentiary problems, I think that should be briefed. There are large portions of the response that I feel should be stricken, because they disclose improper settlement material. And so we would ask at the outset that the hearing be adjourned so that we could file reply papers.

THE COURT: Well, let me first hear about the evidentiary record for this matter. I was provided with an exhibit index which indicated that the last item in the index, a January 8, 2008 e-mail, is in dispute. I took from that that the other items were not. I didn't read the e-mail because I

knew it was in dispute. Was that a fair assumption?

MR. SCHWARTZ: It's a fair assumption, of course, that we dispute the admissibility of item 8. There is one other item, it's an item actually that we've included as Exhibit N to Ms. Malloy's declaration, that is admissible. But the use that Delphi has made of that document is not acceptable under the rules of evidence. In addition, they have disclosed the contests of settlement discussion in their motion papers, their brief. That is not reflected in any of the documents. And those portions of the brief should also be stricken. And there specifically, I'm referring to with respect to Exhibit N, that is the conciliation letter from the EEOC during the investigative process. We included that basically to give a full picture of the investigation. And because by the EEOC's regulations, they were required to enter into conciliation efforts. Under Rule 408, in other words, the use of that settlement material was to rebut an argument of undue delays, specifically, explicitly under the rules of permissible use. The use that Delphi has made of that document is (1) to look at the actual terms of the conciliation offer, to say this number, the number that's in that letter which may have read, is 200,000 dollars, and that is the actual amount of the claim. And then they used that to try to impeach the amount of the later settlement offer. You may not have read the e-mail but you read the number because its all throughout

their brief, so if you read the brief you know that.

THE COURT: But you don't want to have either of the settlement offers in for purposes of the amount of the claim?

MR. SCHWARTZ: For purposes of the amount of the claim, that's correct.

THE COURT: I agree with you on that.

MR. SCHWARTZ: And in addition, there is commentary in Delphi's --

THE COURT: I mean, it's admissible for other purposes, but under 408 it can't be admitted to go to show the amount of the claim.

MR. SCHWARTZ: I think that is the only purpose that Exhibit 8 is being offered. I know in our conversations, Mr. Lyons has said that this goes to the good faith prong of the pioneer analysis. But that can't be right, this is not good -- it doesn't have anything to do with the good faith of the EEOC and filing the claim when it did. If anything, it has to --

THE COURT: Well, I haven't read it. So as long as it's not being admitted to show the amount of the claim Mr. Lyons can make the argument and you can say that's what it's doing, and I'll consider it at that point, if he wants to rely on it.

MR. SCHWARTZ: Okay. And there are also statements throughout the brief about the content of settlement discussions. And in particular, there is a suggestion in the

papers that I threatened them that if they were to litigate this -- that if they were to litigate this claim, I would have moved to withdraw the reference in this case. That is, first of all, not at all what I said. What I said was, if they were going to litigate the merits of the claim, it might make sense to agree to withdraw the reference so it can be consolidated with the enforcement action in Buffalo, so as not to duplicate effort. But in any case, that also came in the context that settlement is not in any way admissible in this proceeding.

THE COURT: Well, why is that? Everything you say in the context of a settlement is not shielded.

MR. SCHWARTZ: I think that under Rule 408 that's not the case. I think that discussions in the context of a settlement are shielded.

THE COURT: No, that's not right. Not every discussion. If it goes to an issue of good faith, it isn't. Now, you -- it's not that big a point, frankly. I take with a grain of salt the whole -- the whole issue. But --

MR. SCHWARTZ: That also goes to an issue on the merits because these are not the relevant good faith arguments. Again --

THE COURT: But again, I'm just talking about the evidentiary issues to see whether they really are something

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that needs to be briefed. So far I don't think they do. You

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won on one and I think legitimately you lost on the other and I

don't think any briefing would have changed that, particularly since -- I'm telling you both right now, I think it's a very peripheral point to begin with.

MR. SCHWARTZ: Fair enough. And just generally, I would like an opportunity to be able to review the papers, to read the cases cited in the papers, and to put in a reply.

THE COURT: Well, I -- you know, I prepared for this --

MR. SCHWARTZ: Let me ask in the alternative then, can I ask for the opportunity to put in post-hearing papers?

THE COURT: Well, we see. The law in this area is quite clear. There -- there's a leading Second Circuit case on it, you've cited Pioneer, you cited Trap Rock, although not -- well, no, you cited both Trap Rocks. And, you know, I don't think there's any particular mystery here on the standard under Pioneer. If we go off on some other point, including the capacity in which the EEOC seeks damages that I think needs additional briefing, I'll ask for it. But, I just -- you know, this is -- I know this was adjourned once because - I recollect your letters, and it was something I prepared on already and the parties are here on it, I just don't think I --

MR. SCHWARTZ: I appreciate that, Judge. I just --

THE COURT: -- should adjourn it further.

MR. SCHWARTZ: I just do want to note that prejudice here is that Delphi's had our arguments for months. We put in

a reply to their untimeliness objection that had the merits of our arguments. We've had their arguments functionally since 5 p.m. yesterday.

THE COURT: Well, but -- you know, they haven't violated any rule. And again, this is -- the arguments are pretty evident -- should be pretty evident to the movant and everyone else. I mean, it's a -- I just don't feel you're particularly disadvantaged.

MR. SCHWARTZ: Okay. Well --

THE COURT: So, as far as the record is concerned then, is it -- it's fair to say that items 1 through 7 in the exhibit index are agreed to as to admissibility?

MR. SCHWARTZ: That's correct.

THE COURT: And as number 8 is concerned, well, I haven't looked at it.

MR. LYONS: If I may, Your Honor. I mean, again, we're not introducing it to prove the amount of the claim.

THE COURT: Okay.

MR. LYONS: Rather, again, I think it's almost to rebut the rebuttal of the contention of undue delay.

THE COURT: All right. Well, why don't we --

MR. SCHWARTZ: Let me say one more thing on that Exhibit 8, before we look at it. A characterization in the index that its an e-mail regarding expanding discovery is grossly wrong. Is an e-mail from me that begins and ends in

boldfaced letters with the phrase "for settlement purposes only." It was not something that should have been disclosed.

THE COURT: Well, again, I don't accept the fact that someone can write a settlement memo and keep it all out. But, let me take a look at it.

(Pause in proceedings.

THE COURT: Okay. I guess, as long as its not being introduced to show the -- some sort of admission or evidence as to the amount of the claim, then I believe it's marginally relevant. And I think it could serve as part of the record. You can tell me why I shouldn't give it much attention, and I may well agree with you, but I just -- I don't see why it should be excluded.

MR. SCHWARTZ: Thank you, Your Honor. I suppose then we'll move to the merits of the motion.

THE COURT: Okay.

MR. LYONS: As a threshold, though, the parties have agreed that we are not going to introduce live testimony, we'd rely on the papers and also the depositions which Your Honor has in exhibit binder.

THE COURT: Except for the depositions, there's not going to be any cross examination of any witnesses or the like.

MR. LYONS: That's correct.

THE COURT: Okay. All right.

MR. SCHWARTZ: And so as Your Honor said, about the

standard of excusable neglect, is well established by the Pioneer case and by the Second Circuit in a line of cases. And there are four factors to consider. And so let me just discuss those factors and how they apply to this case. But let me stress at the outset, that this case presents a exceedingly narrow question, whether when a law enforcement agency receives a complaint by a single individual of unlawful conduct and after a diligent investigation determines that there was unlawful conduct against a class of employees, whether all of that information is received after the bar date, whether the agency acts with excusable neglect if they wait until they complete their investigation to file a proof of claim in bankruptcy. And I think the answer to that case -- to that question, that narrow question on the facts of this case, should be yes. And let me look to the four Pioneer facts.

The first, of course, is the reason for the delay. And as Mr. Lyons points out in his opposition, this is the most important factor in the Circuit. The reason for this -- for the delay is clear. First of all, there is, I don't think, any contest that the EEOC could not have filed its proof of claim before the bar date. They did not learn about the charge of discrimination from Mr. Straughter until after the bar date. In fact, the conduct giving rise to Mr. Straughter's claim of discrimination did not occur until a month after the bar date. So they -- the EEOC received the information after the bar

date, and then they went through their process. And the process is receive a charge of discrimination, investigate that claim, including disclose it to the target of the investigation and allow them to make a response, make a determination, enter into conciliation efforts, if those conciliation efforts fail, refer the case to the legal unit, the legal unit makes a determination to -- whether or not to recommend further action to the commissioners. The commissioners of the EEOC in Washington, decide in cases like this, whether an enforcement action is appropriate. If they decided that it is, an enforcement action is filed. And then and only then, could the EEOC file a proof of claim.

THE COURT: Wasn't that contradicted by your witness' deposition?

MR. SCHWARTZ: Absolutely not. And that was one of the misstatements of facts that I would have like to have corrected in briefing.

THE COURT: Let me just read the deposition.

MR. SCHWARTZ: Absolutely. What page are we at?

THE COURT: Well, there are two different pages on the deposition. If you look at the bottom --

MR. SCHWARTZ: This is the version in the binder?

THE COURT: Yes. And it's Ms. Malloy's deposition, it starts on page 29.

MR. SCHWARTZ: That's the page at the bottom.

THE COURT: Right. Line 6 on page 34 of the original transcript, I guess.

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"Q. Are you aware of the steps -- are you aware of any steps that the EEOC must take to file a proof of claim in a bankruptcy case?"
"A. I'm aware of some of the steps, yes."
"Q. What are those steps?"
"A. I can only testify as to this case."
"Q. This case is your only source of knowledge as to the steps?"
"A. Yes."

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She earlier testified about the Attorney Manuel with regard to enforcement actions. Delete

MR. SCHWARTZ: Judge, I think we can stop right there. She could only testify about this case. In this case, the EEOC commissioners had already authorized the District Court litigation. And so to say that they did not have to go back to those commissioners to get further authorization to file the proof of claim is not nearly the same thing as saying they could have filed the proof of claim at the outset. And let me --

THE COURT: That's your reading of her argument, her question, "What authorizations do you need to file a proof of claim in a bankruptcy case on behalf of the EEOC?"

MR. SCHWARTZ: Everything is qualified by lines 11

and 12, "I can only testify as to this case." If there's ambiguity on that, as long as --

THE COURT: And what is your evidence to show that there are those limitations on filing a proof of claim?

MR. SCHWARTZ: It's the confidentiality rules of the EEOC. The EEOC is not permitted to make public a charge of discrimination until there is litigation. Either until they file litigation or until the claimant files litigation. I'm reading here from that enforcement manual, laws enforced by the De l e

EEOC quoting 42 U.S.C. 2000e-5. "Charges shall be in writing, under oath or affirmation, and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there's not reasonable cause," it says "that you issue a right to sue letter." And De l e

then it says, that or they'll sue if they determine that it is De l e

founded. But the critical language, "charges shall not be made public by the Commission." Simply on the basis of a charge of discrimination, the Commission could not have filed a proof of claim, that is critical. And that's sound public policy. You De l e

don't want the EEOC filing, in its own name, charges of discrimination, until it determines that those charges have merit. It also, incidentally, would be an enormous waste of public resources to require the EEOC to file proof of claims in association with every unfounded charge of discrimination.

Earlier this week in the Holowicki case, the Supreme Court observed that the EEOC receives approximately 175,000 complaints of ADA discrimination alone every year. To require the EEOC, an agency which receives no compensation as a result of prosecuting these claims, to file a proof of claim in every bankruptcy, every single time someone simply makes a complaint of discrimination, it doesn't make sense and it's not permitted under the EEOC's rules. They were required to wait until Delete either Mr. Straughter had filed a District Court lawsuit, or, Delete because in this case they determined that his claims had merit, they filed a District Court lawsuit to file the proof of claim. And that is why there was good reason for the delay in this case, because they had to substantiate the charge of investigation because they were not permitted to publicize it. That's the first Pioneer factor.

Second Pioneer factor, the prejudice to the debtor. You seem like you saw questions.

THE COURT: This really sounds totally bizarre to me and totally contradictory to the definition of claim in the Delete Bankruptcy Code. Delete

MR. SCHWARTZ: I think that is fair, Judge. And the point that I'm trying to make is that the claim of --

THE COURT: Why wasn't this argued at all in the motion? Why wasn't it argued at all at deposition?

MR. SCHWARTZ: Because it came to my attention

earlier today --

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THE COURT: Weren't you defending the deposition?
MR. SCHWARTZ: I was, Judge. I didn't know about this --
THE COURT: So this isn't like a -- a, you know,

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creative use of what is the meaning of the word is? You were truly mistaken by that question and her answer, that you refer

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to a bankruptcy case?
MR. SCHWARTZ: No. Everything -- everything has to be taken in the context of the conversation. She said that she could only testify to this case. She doesn't --
THE COURT: She's the witness on excusable neglect.
MR. SCHWARTZ: No. She is a fact witness.
THE COURT: I know. And it's a fact issue.
MR. SCHWARTZ: No, no. That's fair but --
THE COURT: And she was asked -- never mind. You know, I'll take it for what its worth.
MR. LYONS: Your Honor, if I could make just one point. The bar date order says all attached documentation is confidential. So if there's some confidentiality concern, paragraph 4 of the bar date order makes it clear that all supporting documentation to a proof of claim --
THE COURT: What is the --
MR. LYONS: -- are confidential.
THE COURT: -- citation of the document you're

reading from? Is it a CFR or is that confidential --

MR. SCHWARTZ: This is the statute itself. It's 42 U.S.C. Section 2000E-5. And that, Judge --

THE COURT: I'm sorry, 2000?

MR. SCHWARTZ: It's 2000E, not in parens, just 2000E-5.

THE COURT: Okay.

MR. SCHWARTZ: And that's -- that's actually a sentence -- a provision under Title 7, that is incorporated into the ADA by Section 107 of the ADA.

THE COURT: Okay. So you're reading the statute itself.

MR. SCHWARTZ: I was reading the statute itself. You asked why we didn't mention this earlier. Frankly, the reason that we didn't mention this earlier is because we've been forced to litigate this in an extremely rushed way and, you know, it just came to my attention. And I apologize for that. And that's why I would have liked the opportunity to put in

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additional briefing. However, the fact remains that the EEOC was not permitted to disclose the claim until litigation was filed. And that absolutely justifies the delay.

The next two factors, the prejudice to the debtor and prejudice --

THE COURT: Well, I have a question. You're saying this witness doesn't know anything about the EEOC's policy in

bankruptcy cases -- the, right? Just this case?
MR. SCHWARTZ: That's correct.
THE COURT: Do you have any evidence that the EEOC does or does not file proofs of claim in other bankruptcy cases?
MR. SCHWARTZ: Does or does not file proofs of claim?
THE COURT: Right.
MR. SCHWARTZ: I don't have any evidence one way or the other.
THE COURT: So you don't have any evidence as to whether they file claims before litigation ever, or only after litigation is commenced?
MR. SCHWARTZ: Not as I stand here today.
THE COURT: Okay.
MR. SCHWARTZ: Okay. And moving on to the prejudice --
THE COURT: So the argument about the policy point is not backed up by any specific facts as to the EEOC's actual practices on whether, notwithstanding the policy argument you made, it does or does not file proofs of claims in bankruptcy cases?
MR. SCHWARTZ: That is not a policy argument, that is a statutory argument.
THE COURT: No. You said think of the policy, Judge, if we had to do this.

MR. SCHWARTZ: No. I do not know the evidence underlying the policy, that's correct. The policy, though, certainly makes sense. I believe, again, the reference to the number of ADA claims, as I said, comes from the Supreme Court's case earlier this week in the Holowicki decision.

You know, the reason for the a delay, and excusable neglect, is, according to the Supreme Court from Pioneer, supposed to be a flexible inquiry. And when you say it's a flexible inquiry, that means you have to look at the entire context and what is excusable for the EEOC, where a law enforcement agency may not be excusable for the Acme Corporation. But that's why I began by saying that this is a case that presents an extraordinarily narrow issue. And then that is the segue to the prejudiced point. Because the prejudice really that arises out of allowing this claim, is that it opens the floodgates. I asked last night, Mr. Unrue, what are the prejudices that flow to Delphi if this claim is allowed. He said if the claims are allowed that it endangers the bankruptcy. And I said what if only this one were allowed? He said that might be different. And I said well, what if this one were allowed in some small amount? He said well, that might be different.

This case -- this claim is sui generis, it is the claim of a law enforcement agency asserting law enforcement charges on behalf of grieved Delphi employees who were the

victims of a facially unlawful policy. And the EEOC didn't know that it was facially unlawful until they were able to investigate it. And even now, they don't know the full extent of the unlawfulness because --

THE COURT: Let me ask you about that. Because if its facially unlawful, in the response of Delphi to the first inquiry, which is attached to Ms. Malloy's declaration and is also quoted at paragraph 11. That response was on November 6, 2006.

MR. SCHWARTZ: Which exhibit is this, Judge.

THE COURT: Well, it's attached as Exhibit H, but she also quotes at paragraph 11 of her declaration.

MR. SCHWARTZ: Okay.

THE COURT: And the response said, "it has been Delphi's policy to require this of all employees." So as far as investigating whether this is a pre or post-petition claim, on November 6th they said it -- everyone.

MR. SCHWARTZ: That's not what they're saying now, Judge.

THE COURT: No, I know. But that's what they said then. What more was there to investigate?

MR. SCHWARTZ: Because, first of all, they have to determine whether that's true. And they have to determine what it means. Does that mean of all employees forever. Does that mean for all employees at all locations. Does that mean for

all employees at the Rochester plant on August 16, 2006 They
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don't know what that means. They have an obligation to investigate it. That is why the EEOC exists. And now, Delphi has taken a very different position, which is that they never
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really had such problems and that that policy doesn't exist
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every place, they won't tell us where the policy exists. That's why we're in discovery in the Western District of New York, because we don't even know what the policy is. We still don't understand the contours of this claim, and that's -- that's why we are litigating.

THE COURT: But as far as having the basis for asserting a claim, I just really -- again, leaving aside your point about some hoops need to be gone through before a proof of claim is filed, several hoops, what more investigation really needed to be done to at least have been able to say, at that date, that it appeared reasonable to the EEOC based on
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Delphi's own statement that there was a pre-petition claim?

MR. SCHWARTZ: The investigation that occurred between November 6, 2006 and May 27, 2007, when the letter of determination was made. This response by Delphi was the first response to the charge of discrimination made by Mr.
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Straughter. It incidentally only responded to his individual
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charge and not because there were not at that point any class charges. They did not, in this response, also respond to the requests for information that the EEOC had propounded, they

didn't do that until a little bit later. So all we had was a position statement by Delphi that their practices were entirely lawful. A position statement by Delphi that their practices

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were entirely lawful was not, apparently, enough for the EECO to feel comfortable issuing a letter of determination. And with respect, I think it is not for us to second guess the way that the EEOC investigates claims of discrimination, that is why they exist. And this investigation, I think by all objective measures, have been extraordinarily quickly, there are not delays in here. And the delays that do exist are while they were waiting for information from the Delphi Corporation.

THE COURT: So the determination was made May 22nd?

MR. SCHWARTZ: That is when the determination was made. At that point, they were required to enter into

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conciliation efforts. This is all by reg. The conciliation efforts failed a month later and they were required to notify Delphi that they failed. They did that, I believe, on June 19, 2007. At that point, again, by regulation, the case was referred to the legal unit. The legal unit did its assessment of the case and made its recommendation to the commissioners in Washington. The commissioners of the EEOC are the only people who have the authority to authorize an enforcement action in Federal District Court in cases like this one. They did and that complaint was filed on September 28, 2007. At that point, when the District Court complaint was filed, the charge of

discrimination and the EEOC's findings were effectively unsealed. And so, as well, they filed their proof of claim in this bankruptcy. This is not a case, Judge, like Trap Rock, where the agency -- the county in that case, who is prosecuting De l e a circa claim was essentially trying to game the system, where they filed an enforcement action instead of filing a proof of claim. The EEOC acted entirely appropriately here when they were ready to unveil to the world that they had determined that Delphi had an unlawful policy of requiring its employees to execute releases to all their medical records, whenever they called in sick. When they were ready to release that to the world, they both filed a complaint in Federal District Court and filed a proof of claim to protect the monetary component of their damages in this Court. That's what you want a responsible law enforcement agency to do. That act, again, causes no prejudice to the debtors because it has no floodgate effect. It is entirely reasonable, and it certainly was all done absolutely in good faith. This is the model of an investigation by a law enforcement agency. They received a claim, they investigated it quickly, they made a determination, they filed a lawsuit, and simultaneously they filed a proof of claim. They were not permitted to file a proof of claim earlier, it would not have been responsible to file a proof of claim earlier. It would not have been reasonable. And again, excusable neglect standard, has to take into account the

position of the creditor. And for the EEOC, an agency that gets none of the money if this claim's allowed -- gets none of the money back, even to offset its litigation costs to require

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them to file protective proofs of claims which both disclose

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the charge of discrimination in violation of their confidentiality rules, disclose the charge of discrimination, you know, in a way that embarrasses potentially the debtors, disclose the charge of discrimination in a way certainly that can embarrasses the claimant, who in many cases, may be current employees of the corporation. And to file a charge of dis -- to file a proof of claim --

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THE COURT: I'm sorry, how does it embarrass the claimant?

MR. SCHWARTZ: The claimant can still be working for the corporation. And so to, you know, disclose to the world that you have accused your boss, your current boss, of discrimination --

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THE COURT: But he -- Mr. Straughter's done that.

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MR. SCHWARTZ: Mr. Straughter had been fired.

THE COURT: Right.

MR. SCHWARTZ: It was pretty obvious.

THE COURT: Right.

MR. SCHWARTZ: He was no longer employed in this particular case. But, well --

THE COURT: Oh, I see, you're arguing the policy

again without --
MR. SCHWARTZ: I'm arguing that policy.
THE COURT: All right. Fine. I got it.
MR. SCHWARTZ: That's correct. It doesn't make sense to require the EEOC, particularly on the facts of this case, to have filed a proof of claim in the moment that Mr. Straughter filed his charge of discrimination.
And, in particular, in this case, all of this happened after the bar date. There's no conceivable way for the EEOC to file a timely claim. So really, we're only quibbling about the delay now, whether they should have filed the proof of claim a month after the bar date or a year after the bar date. And I submit to you, on the facts of this case, it was entirely reasonable and certainly excusable for the EEOC to do a quick and responsible investigation consistent with its regulations and statutes before filing the proof of claim. And for that reason, the proof of claim --
THE COURT: Are you telling me, as an officer of the Court, that you do not know, and have not made an inquiry, of the EEOC as to its policy in filing proofs of claims in bankruptcy cases?
MR. SCHWARTZ: Yes.
THE COURT: You just -- you literary don't know.
MR. SCHWARTZ: I literary don't know, Judge.
THE COURT: Okay. All right. That's all I want to

know. That's all I want to know. Okay.

MR. SCHWARTZ: Unless, there are questions, I'll submit.

THE COURT: It's not referred to in any regs or anything like that?

MR. SCHWARTZ: I would have been happy to have put in briefing with all the regulations.

THE COURT: Okay. How does the statute define enforcement action?

MR. SCHWARTZ: I don't know the answer to that.

THE COURT: Okay. I take it there's no cap on the claim at this point, right?

MR. SCHWARTZ: There is not. As you now know, we have begun to enter into settlement discussions, we have never received a counteroffer from the debtors.

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THE COURT: Okay. Mr. Lyons?

MR. LYONS: I do Your Honor. I'm sorry, Your Honor. Your Honor, I'll be very brief. I mean, we're going to rely on our papers. You know, again, the burden of proof is on the United States to prove that they've met the Pioneer factors of

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excusable neglect. Your Honor, the length of the delay -- I mean putting the proof of claim in is to give a placeholder to know that there may be a claim. There's nothing horribly embarrassing or sensitive about that. The bar date order, frankly, encompasses any attachments are confidential. So I

think it's kind of an after the fact excuse, after Ms. Malloy testified, and I asked her pretty squarely are there any authorizations, she didn't believe they were, and now we're hearing this today. You know, again, they decided to submit whatever proof that they had in support of their motion. I'm frankly surprised they didn't have the investigator here. The primary investigatory, Ms. Carlo, who was involved in this back in September of '06, who -- it's not like this is some charge that Mr. Straughter came up with: she drafted the charge. She drafted it for him, he reviewed it --

THE COURT: All the argument they're making is that they're precluded by statute from filing a proof of claim. That's the only argument that has any possible merit here.

MR. LYONS: And on that, Your Honor, is -- you know steps could have been taken to make it even more confidential if that were, in fact, the case. Again, you know, Chapter 11 in this case, we need to know what claims there are. We have investors who are depending upon the answer as to what our claims pool is. We have an EPCA target that we have to meet. You know, we can't wait until, you know, three years after we emerge to all of a sudden find out they've completed their investigation; we need to know if there's a claim. And also another point, Your Honor, we served all of our employees with the bar date order. Not a single claimant filed a proof of claim by the bar date. So certainly those claimants would know

if they had a violation, and none of them have filed a proof of claim. The EEOC is just seeking damages on behalf of these employees. So there's another grounds, apart from the whole excusable neglect, Your Honor, why the other employees would be -- would be bound by the bar date order. They all got the bar date order, none of them filed a claim, and we briefed that in our papers.

So, Your Honor, I really don't have much more, we'll rely on the papers. We don't believe that they've met the burden under Pioneer. There's no explanation as to the length of delay. It was within their reasonable control. There's tremendous prejudice to the debtors. It will unduly lengthen proceedings. And that's where the -- and he may disagree with what was said on the -- withdrawing the reference to estimate the claim, but that would no question add delay to be able to estimate this claim if we had to, you know, go out to Buffalo to estimate this claim within the time period that we have to estimate this claim, which is one month before emergence, Your Honor. And frankly, good faith, we've laid out the facts, that's just up to Your Honor how Your Honor wants to view that, we've just laid it out. With having a 200,000 dollar offer and then come in with a fifteen million dollar cap, certainly that goes to the issue of we're negating a negative contention of undue delay for under Federal Rule 408. Unless Your Honor has any questions, I'm prepared to rest on our response.

THE COURT: Okay. Do you have a response to the argument that the -- the actual employees got notice of the bar date, and obviously knew about the policies? They may or may not have known that it was subject to attack, but they had notice?

MR. SCHWARTZ: Two responses. One, there's no evidence that Mr. Straughter was served and there's -- you know, artful drafting over there, but Mr. Straughter was not working for Delphi at the time that the bar date order was served on the employees. So there's no reason to believe that he got it, and he was the charging party in this case, first point.

Second point, the fact that the employees may have been aware of the policy is very, very different from saying that they were aware that they had a claim. This is not an obvious form of discrimination that we're talking about in this case. This is not "we are firing you because of your race or gender." This is a policy that required employees to, you know, execute releases for their medical records when they called in sick. It is an unlawful policy and a discriminatory policy under the law, but not at all obvious to the common person that it is either unlawful and certainly not unlawful in a discriminatory way. As evidence of that fact, I point to the incredible paucity of cases that discuss this particular point of discrimination. Really, I'm aware of two, the Conway case

from the Second Circuit and Judge Scheindlin's decision in the Transport Worker's Union case. So to say that they were aware of the policy is not to say that they were aware that they had a claim.

I don't think in any case, that Mr. Lyons is making an estoppel --

THE COURT: You know -- look, let me make two -- let ask you two questions related to that. First of all, as far as the intricacies of the law are concerned, I understand your point. I doubt any employee would have read the case law. On the other hand, if you had a policy that said you can be fired unless you provided all your medical records, human nature being what it is, someone might be offended by that.

MR. SCHWARTZ: Mr. Straughter was. And he was the first person to bring it to the attention of the EEOC. And bear in mind, this was not, at least to my knowledge --

THE COURT: No, but what I'm saying -- but in that sense it doesn't seem esoteric to me, you know. It seems analogous to situations where people don't necessarily know the ins and out of securities laws but nevertheless feel sometimes that they were defrauded by debtor.

MR. SCHWARTZ: That's right.

THE COURT: In those cases the courts have said if someone is looking to certify a class, now I understand your class is being -- your action, on behalf of the class, is being

brought by a government agency as opposed to an individual lead plaintiff. But the courts have said, Judge Rakoff, Chief Judge Bernstein, and other courts have said, Judge Garrity from this district, that there's a big distinction when someone seeks to certify a class in a bankruptcy case after the bar date, because the members of the class got notice and they haven't filed a proof of claim. Class certifi -- you know, certifying them undermines the bar date. So what's your response to that?

MR. SCHWARTZ: A few responses. The first one is I think that it was not nearly as clear to Delphi employees that this was the policy. And, in fact, the policy of firing employees was limited to a small class of probationary employees that Mr. Straughter fell in. So that day-to-day employees of Delphi may have been denied sick pay for those days when they were not -- when they didn't execute releases, but they wouldn't have been fired. And so prior to where someone would go to a lawyer over a day or two's loss of sick leave pay, that's one point. The second point, I think --

THE COURT: I'd get pretty mad if someone asked me to turn over all my medical records. That's the type of thing that people get mad about. But so -- go ahead.

MR. SCHWARTZ: And there were a few other people who complained and we are starting to learn this in discovery. As we are getting names of people from Delphi, there were people who complained. Delphi tells us that no one else was ever

fired, I don't know if that's the case. And it may be that people felt aggrieved. You know, I don't know what the case is.

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The second, and I think more important point, is that that is essentially an estoppel argument. And the estoppel argument can go to the merits of our claim, say that we should be estopped from recovering on the claim. I don't think it goes to any of the Pioneer factors, whether it goes to whether the claim should be permitted to be filed in the first place, it goes to whether or not it should be allowed.

Finally, I would point out to you, this argument was an argument first raised in the papers that I received last night at 5 p.m. and we have not had an opportunity to respond to it.

THE COURT: Okay. Anything else?

MR. LYONS: Just very quickly. You know, if Mr.

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Straughter was just involved, Your Honor, we wouldn't be here.

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I mean, I think if there's liability to Mr. Straughter it would be an administrative --

THE COURT: Well, it's admit -- it's post-petition.

MR. LYONS: It's post-petition, exactly. So we're really here because of the other unnamed, you know, claimants that, you know, that the EEOC asserts are out there, and that's really why we're here.

And as to the argument on the bar date and the other

employees, again, I think any kind of discovery accrual analysis, Your Honor, it's always the facts. Did you -- were you aware of the facts? Whether you understood what claim arises out of those facts does not go to what point in time the particular plaintiff had awareness of the facts giving rise to this cause of action.

MR. SCHWARTZ: Just one factual note, Judge. They Delete have objected on timeliness grounds to Mr. Straughter's personal proof of claim, that's part of the twenty-sixth omnibus objection.

MR. LYONS: If we did, Your Honor, it's inadvertent. Delete I mean, again, the timeliness of Mr. Straughter's claim is governed by the administrative bar date, which is established under the plan.

THE COURT: Okay. All right. Well, I'll take a break and read the statute that was cited to me. And so I'll be back probably at 11:30.

(Recess from 10:55 a.m. to 11:44 a.m.)

THE COURT: Please be seated. Okay. Before I proceed, is Ms. Malloy present?

MR. SCHWARTZ: Yes, Judge, she is.

THE COURT: Ms. Malloy, if you can come up, please. I understand the parties have waived any sort of direct testimony, but I have a question of you as the declarant and as the person who was deposed. I'm not going to put you under

oath because you are an officer of the Court. But my question is, are you aware of any policies or practices of the EEOC with respect to filing proofs of claim in a bankruptcy case, other than that particular proof of claim that you filed?

MS. MALLOY: No, Your Honor, I don't know the policies or practices or --

THE COURT: Okay.

MS. MALLOY: -- whether there are any.

THE COURT: Okay. Very well, thank you. You can sit down, as can you, unless you have something to say.

MR. SCHWARTZ: No, sir.

THE COURT: Okay. All right. I have before me a motion by the United States on behalf of the Equal Employment Opportunity Commission, or the EEOC, to deem a proof of pre-petition claim filed in these Chapter 11 cases, claim number 16727, timely filed. That motion is necessary because the bar date in these Chapter 11 cases was July 31, 2006 and the EEOC proof of claim was filed on October 16, 2007. The U.S.'s motion is made pursuant to Bankruptcy Rule 9006(b)(1) and the case law interpreting that rule, first and foremost, Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership, 507 U.S. 380 (1993). The general standard for determining such a motion was set forth in the Pioneer Investment Services case, but the Court is also guided by the Second Circuit's interpretation and application of that

standard in Midland Cogeneration Venture Ltd. Partnership v. Enron, (In re Enron) 419 F.3d 115 (2d Cir. 2005). The standard is generally well settled. Bankruptcy Rule 9006(b)(1) permits a claimant to file a late proof of claim if the failure to submit a timely proof of claim was due to "excusable neglect." The burden of proving excusable neglect is on the claimant seeking to extend the bar date. In re R.H. Macy & Co., 161 B.R. 355, 360 (Bankr. S.D.N.Y. 1993). The Supreme Court in Pioneer developed a two-step test to determine whether the cause for a late filing was due to excusable neglect. First, the movant must show that its failure to file a timely claim constituted neglect, as opposed to willfulness. Neglect generally being attributed to a movant's inadvertent mistake for carelessness, 507 U.S. at 387-88. After establishing neglect, as opposed to willfulness or a knowledge of the bar date and the failure to show any basis for neglecting it, the movant must show by a preponderance of the evidence that the neglect was excusable. That analysis is to be undertaken on a case-by-case basis, under the particular facts of the case. Although the Court is to be guided by and make the determination pursuant to a balancing of the following factors: the danger of prejudice to the debtor, the length of the delay and whether or not it would impact the case, the reason for the delay, in particular whether the delay was within the control of the movant, and finally, whether the movant acted in good

faith, Id. at 395.

In the Midland Cogeneration case the Second Circuit, in upholding the lower court's determination that a late filed proof of claim would not be deemed timely filed stated, "we have taken a hard line" in applying the Pioneer test. Silivanch v. Celebrity Cruises Inc., 333 F.3d 355, 368 (2d Cir. 2003) in a "typical" case, "three of the Pioneer factors," the length of the delay, the danger of prejudice and the movant's good faith "usually weigh in favor of the parties seeking the extension," Id. at 366. We noted though that "we and other circuits have focused on the third factor, "the reason for the delay, including whether it was within the reasonable control of the movant," Id. And we cautioned "that the equities will rarely, if ever, favor a party who fails to follow the clear dictates of a court rule" and "that where the rule is entirely clear, we continue to expect that a party claiming excusable neglect will, in the ordinary course, lose under the Pioneer test," Id. at 366-67. And that quotation appears in the Midland Cogeneration case at 419 F.3d at 122-123. See also In re Musicland Holding Corporation, 356 B.R. 603 (Bankr. S.D.N.Y.) in which Chief Bankruptcy Judge Bernstein stated that the Second Circuit focuses on the reason for the delay in determining excusable neglect under Pioneer and that the other factors are relevant only in close cases.

Strict enforcement of a bar date is no mere and

unimportant procedural matter in a Chapter 11 case. And the bar date and a consequent filing of claims before the bar date allows a debtor-in-possession, such as these debtors, to evaluate the claims against the estate and formulate and negotiate a plan that relates to the claims as filed, In re Drexel Burnham Lambert Group, Inc. 148 B.R. 1002, 1008-10 (Bankr. S.D.N.Y. 1993). Allowing late filed claims, especially after their plan is confirmed, subjected debtor to prejudice because it would have to renegotiate a myriad of settlements. In this case, at least that form generally speaking, the basis for a Chapter 11 plan, which are negotiated and set forth for the Court to consider in contemplation of the known claims asserted against the estate. Again, See Drexel Burnham at 148 B.R. 1008-10, see also Midland Cogeneration 419 F.3d at 129.

Furthermore, allowing a late claim that materially alters the distribution to creditors would prejudice the creditors who relied on the disclosed distribution when voting to accept or reject the plan, Id. In light of the importance of collecting on all of the allowable claims against the estate in one forum and to permit the parties to proceed to consider a Chapter 11 plan in light of those claim, Congress interpreted the term claim in the Bankruptcy Code extremely broadly. As set forth in Section 1015 of the Bankruptcy Code, the term claim means a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated fixed,

contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, or a right to an equitable remedy for breach of performance, if such breach gives rise to a right to payment. Whether or not such right to an equitable remedy is reduced to judgment, fixed contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

In this Chapter 11 case the reasonable allowed amount of unsecured claims against the debtors' estate took on even more significance than in most Chapter 11 cases. That is, because over a year ago it became clear that the debtor, to achieve all the various goals that it wanted to achieve in the case, including the preservation on a frozen basis of its pension plan, needed outside investors to agree to invest considerable amount of money in the debtors pursuant to a plan of reorganization. Part of that investment decision, as negotiated with the plan investors and the creditor and shareholder committees and other interested parties, was a cap on the allowed amount or allowable amount of unsecured claims as of the effective date of the plan. As ultimately negotiated in the so-called EPCA agreement, that cap was 1.45 billion dollars, as specified in the agreement. The Court, at the confirmation hearing in this case, that began on January 7th of this year, took testimony as to the debtors' ability to satisfy that cap. At the time of the confirmation hearing in that testimony, pursuant to the debtors' analysis and the Court's

determination of timely filed claims, that would meet the definition of the claim in the EPCA cap, the debtors had satisfied the cap by approximately two million dollars. Subsequently, the Court has continued to deal with the debtors' expedited process for dealing with claims to which they object and there have been further rulings on claims as well as further settlements, and as set forth in the deposition of Mr. Unrou, who has primarily responsibility, as an officer of the debtors, for the claim liquidation process. Taking into account timely filed claims, the debtors are now approximately twenty-four million dollars under the EPCA cap. And again, under the EPCA, debtors will not be able to obtain the investment. And consequently under their Chapter 11 plan, which I confirmed by final -- now final order in January of this year, will not be able to emerge from Chapter 11 unless they remain under that cap. But, of course, the cap is only an added example of the importance of timely compliance with the bar date in these particular cases. In addition to it, the parties-in-interest assessment of properly allowable claims. as in most Chapter 11 cases, as recognized by Drexel in the Second Circuit in Midlantic, form the critical backdrop for the plan as proposed, negotiated and ultimately confirmed by the Court, in the collective process of these cases.

The material facts surrounding or underlying the present motion under 9006(b) are not, as I see it, contested.

And the EEOC, through Ms. Malloy's declaration, primarily alleges that on or about August 28th a former employee of one of the debtors, Stanley Strauder, contacted the EEOC regarding a potential claim for discrimination against Delphi. He was a temporary Delphi employee hired post-petition and terminated post-petition, allegedly he believed in violation of the ADA. He believed that he was terminated improperly based upon Delphi's sick leave policy, which apparently required employees who called in sick to execute a release that would allow Delphi, or at least the entity employing Mr. Strauder, to obtain medical records relating, not just to the employee's reason for taking sick days, but the employees entire medical history.

Ms. Malloy's declaration, which is Exhibit 1 in the record, then states that an investigator for the EEOC, Ms. Carlo, after sending Mr. Strauder a questionnaire to complete, and receiving the questionnaire, drafted a charge of discrimination for Mr. Strauder's signature, which she sent to him on or about September 13, 2006. She subsequently discussed that charge with him and a revised charge to him on September 18, 2006. I take it that the charge referred to in Ms. Malloy's declaration is the charge also referred to -- or the type of charge referred to in 42 U.S.C. Section 2000E-5.

On September 22, 2006, Mr. Strauder formally filed his complaint of discrimination with the EECO, Index Discharge

Number 525-2006-001314. And on October 2, 2006, the EEOC forwarded the charge to Delphi for a response. Before continuing, I should note, although I think by references of the dates makes this obvious, that all of these dates, and most importantly the date upon which the EEOC learned of Mr. Strauder's concerns about discrimination, were after the bar date. Again, that date being July 31, 2006.

On November 6, 2006 Delphi responded to the charge. According to Ms. Malloy's declaration at paragraph 11, the response "essentially admitted the factual allegations of Strauder's complaint, but contended that he could not demonstrate a prima facie case of retaliation of violation of the ADA." Relying on EEOC guidance that an employer may ask an employee to justify his/her use of sick leave by providing a doctor's note or other explanation, as long it has a policy or practice of requiring all employees to do so, Delphi argued that it was permitted to require its employees to execute a release so that the company could obtain medical records and to speak with personal physicians. The specific responses attached as Exhibit H to Ms. Malloy's affidavit, in which on page 2, Delphi says "because Delphi requires this of all employees it was within the EEOC's guidelines." U.S. has stated that Delphi's policy is, on its face, relative of the ADA. It appears to me, notwithstanding the fact that Mr. Strauder was a post-petition employee, Delphi's November 2,

2006 response were one to assume, as of course the EEOC does, the truth of the position that the policy was violative on its face, that there was sufficient information to reasonably infer that Delphi's policy extended also to those who were employed during the pre-petition period since the response referred to practice required of all employees.

In any event, as noted in Ms. Malloy's declaration, the EEOC continued to seek further information from Delphi to investigate a claim of discrimination as set forth in paragraphs 12-14, and in particular, the first sentence of paragraph 14 of her declaration. Eventually, having received sufficient information to satisfy its internal deliberative process, according to Ms. Malloy on or about May 22, 2007, the EEOC issued its letter of determination which, in relevant part, took the position that Delphi subjected Strauder and a class of employees nationwide to an unlawful policy of making disability-related inquiries that are not job related and consistent with business necessity in violation of the ADA. The next day, May 23, the EEOC contacted Delphi to begin conciliation efforts as contemplated by 42 U.S.C. Section 2000(e)(5), which were not fruitful since there is a fundamental disagreement between Delphi and the EEOC as to the underlying premise that Delphi had breached the ADA. Confirming that those efforts had failed on June 19, 2007, the EEOC forwarded the case to the New York District Office for

determination of whether an enforcement action should be filed in the U.S. District Court.

Ms. Malloy's declaration as well as her deposition testimony, referred to the EEOC's Regional Attorneys Manual, which outlines the steps that the EEOC must take before filing a Federal District Court action, as contemplated by 482 U.S.C. 2000(e)(5), to enforce its rights and remedies under the ADA. And her declaration states that after going through the steps in the manual, the EEOC filed a complaint on behalf of a class of Delphi employees in the U.S. District Court for the Western District of New York on or about September 28, 2007, just over three months after conciliation efforts had failed. The EEOC takes the position here that that was a timely and rapid process under its statute and the Regional Attorney's Manual. And as far as this matter is concerned, which deals with relief from the bar date, Delphi appears to me not to have disputed that. Roughly, three weeks later, on October 16, 2007, the EEOC filed the claim at issue here in the bankruptcy case. Which again, is roughly fourteen months since the date that it learned of Mr. Strauder's concern and thirteen -- roughly thirteen months since the date that Delphi responded to the charge.

In addition, the record before me reflects that no employee of Delphi asserted a claim for which one could arguably contend any element included a breach of the ADA or a

violation of the ADA on this type of basis. Notwithstanding the notice of the bar date, to known present and former employees, as well as the publication notice, that was provided, and of course, the fact that this being a very prominent Chapter 11 case involving prominent labor issues, the Court can reasonably infer that present and former employees, who did not receive actual notice, would have been aware of the case and found publication notice meaningful.

As I said at oral argument, I also believe that the basis -- the underlying factual basis for this type of claim, is not counter-intuitive or esoteric. The litigation of the basis of the claim might be, but the fundamental facts underlying the claim are ones where one would assume an employee with a grievance would assert such a grievance. That is, that Delphi required access to all of an employee's medical records in connection with sick leave. Obviously a very sensitive subject to individual employees. Nevertheless, as I said, the record, I believe, is undisputed that there are no such claims on file by employees on a pre-petition basis filed before the bar date.

The monetary relief in the proof of claim of the EEOC appears to assert the claim, on behalf of the employees themselves. And the debtors have cited case law that stands without proposition, including in a bankruptcy context where the EEOC is seeking monetary relief as opposed to perspective

injunctive relief. See EEOC v. Jefferson Dental Clinics, PA 478 F.3d 690, 696-99 (5th Cir. 2007) as well as O'Loughlin v. County of Orange, 229 F.3d 871 (9th Cir. 2007), in which the monetary claim was deemed discharged in Orange County's bankruptcy case.

The argument made by the EEOC in its motion and in the exhibits offered up by the EEOC, including Ms. Malloy's declaration, for why Rule 9006(b)(1) should apply here, is two-fold. First, the EEOC contends that since it is conceded that it learned of the claim after the bar date past, it should be excused from complying to the bar date. Secondly, it contends that its own reasonable deliberative practices and procedures for determining whether it had a properly assertible claim precluded it from filing the proof of claim until the date that it did, or until a short time after the date that it would have been so precluded. The first argument, given the facts that I've recited not clearly as inadequate. Under the two-step analysis set forth in Pioneer, the failure to file a proof of claim until well over a year past after learning of the claim, would need to be justified. First, as an act of neglect as opposed to a conscious decision, or a decision that was made knowing of the existence of the bar date. And second, assuming that that hurdle were surmounted that would satisfy in favor of the EEOC, the balancing test for which the EEOC bears the burden set forth in Pioneer and Midland.

Except as set forth in oral argument today, the EEOC has not carried its burden to show neglect in the first place. Ms. Malloy's declaration and more significantly her deposition transcript, reflect that she did not know when or would not say when she began her involvement in this matter. Although, ultimately, with a considerable amount of prying, her involvement went back from -- went back to sometime before May 22, 2007, but after December of 2006.

In any event, neither from her personal knowledge or from her familiarity with the file and what others have told her, she has not offered up a reason for delay in filing a proof of claim. Such as, for example, any sort of excuses set forth by the Supreme Court or provided by example by the Supreme Court in Brunswick or Pioneer or the absence of notice of the bar date. In any event, the declaration and deposition of Mr. Gershbein show that the debtors' provided sufficient notice of the bar date to the government. As well as, of course, to the bar date order referred to in the bar date notice. And that there was no return of that notice under the case law that establishes a strong presumption of the receipt of notice, which very clearly has not been rebutted here. See In re Dana Corporation, 2007, W.L. 1577763 at page 4 (Bankr. S.D.N.Y. 2007) and In re R.H. Macy & Co., Inc., 161 B.R. 355, 359 (Bankr. S.D.N.Y. 1993), indeed, and I will come back to this. In her deposition, Ms. Malloy was asked two questions

first.
"Q. Did you need to get advance authorization from the commissioner or at EEOC headquarters in Washington prior to filing your proofs of claim, that is the proofs of claim in this case?"
"A. No."
Next question.
"Q. What authorizations do you need to file a proof of claim in a bankruptcy case on behalf of the EEOC?"
"A. I'm not aware of any particular authorizations that we require."
She was also asked, as a witness testifying in support of excusable neglect --
"Q. Are there any other basis of excusable neglect, other than in your memorandum, that the EEOC filed, of which you are aware?"
"A. I think the memorandum covers it."
Including the fact that Mr. Strauder did not even come to the EEOC, I believe it was after the bar date already at that time. And his claim, in any event, is not a pre-petition claim.
Moreover, even if the EEOC could be said to have proven that its delay stemmed from "neglect" as opposed to a knowing act or choice, it has not shown that such length the neglect. And again, I point out, that to my mind for purposes

of the Bankruptcy's Code's definition of a claim under 1015, the EEOC would have believed that there was a basis for asserting a claim at least as early as November 2006 and determined that there was a claim through its own processes on May 22, 2006. But that delay, if it does rise to the level of neglect, would be excusable. The case law dealing with analogous situations, is to the contrary, in support of the debtors' position. See for example, In re Calpine Corporation, 2007 W.L. 4326738, at pages 6-7 (S.D.N.Y 2007), holding that six-month delay between the date when one could be said to have had to file a proof of claim and the date that it was actually filed, was not excusable neglect. And noting that the claimants "had the ability to file supplemental proofs of claim at any time" have not offered any explanation as to why no such supplements were filed until such a late date. In re Northwest Airlines Corporation, 2007 W.L. 498, 295 at page 3 (Bankr. S.D.N.Y. 2007), which the Court stated "movant cannot properly ground it's excusable neglect argument on the fact that it conducted an investigation and tried to resolve the issues in good faith negotiations." All of this could be done after a filing is first made and rights are preserved. A similar point was made in In re Enron Corporation, 2007 W.L. 294, 114 (Bankr. S.D.N.Y. 2007), in which the movant sought leave to file a late proof of claim approximately twenty months after the bar date, stating that it was not sure that it had a pre-petition

guarantee claim against the debtor because it did not have an executed copy of the guarantee. Notwithstanding a diligent search therefore in its file, bankruptcy judge Gonzalez disagreed. Noting again, that the most important factor in the Pioneer analysis is the reason for the delay, the court found that the creditor had failed to carry its burden. In addition, to noting that the creditor had a means to obtain information in the bankruptcy case itself by getting the intervention of the court under Bankruptcy Rule 2004, the court found that it also could have filed a proof of claim without a copy of the executed guarantee, without committing perjury. And that, in fact, the bar date order permitted it to file a protected claim and explain why a copy of the guarantee was not available. See also New York Trap Rock Corporation, 153 B.R. 648 (Bankr. S.D.N.Y. 1993), in which bankruptcy judge Schwartzberg denied a Rule 9006(b) motion on the basis of prejudice to the debtor, as well as untimeliness in pursing non-bankruptcy remedies in the face of a bar date.

As far as the reason for the delay argument, as well as the issue of prejudice, I conclude that the facts here or at least, if not more, compelling. The debtors here were clearly reorganizing, unlike in Enron. Moreover, I've noted the particular nature of prejudice here over and beyond the prejudice recognized in the Enron case that I've just discussed as well as New York Trap Rock whenever new claims are asserted

after a plan has been filed and negotiated and confirmed, that prejudice being of course the cap on claims for purposes of the EPCA and emergence from Chapter 11, which is premises on the EPCA closing. Moreover, at least from the record, the EEOC has not explained why it could not file a protective proof of claim, particularly given the fact that it had formed the belief that there was a claim at least by May 22, 2006, and arguably -- or more than arguably, would have been able to do so in November of 2006. This is particularly so, given the fact that the bar date order itself recognizes in paragraph 4 limitations on who may review the supporting documentation in any proof of claim, which is over and above any rights that a claimant, such as the EEOC, would have generally under Section 107 of the Bankruptcy Code, to obtain additional confidentiality protection, which this Court has repeatedly granted generally in this case, not only to the debtor but to third parties, whenever they made a reasonable case that information covered by 107 would be implicated in a public filing.

It was argued by counsel at oral argument, and I believe contrary to the reasonable inference one can draw from the deposition testimony of Ms. Malloy, which I believe is defended by the same counsel, that the EEOC's statute governing how it needs to process charges in bringing enforcement actions in the District Court, nevertheless precluded the EEOC from

filing a proof of claim in the bankruptcy case. Again See 42 U.S.C. Section 2000E-5, which sets forth a process for the EEOC to review charges by persons aggrieved under the statute. As well as a process for proceeding with a civil action. In particular, it's contended in oral argument that under 42 U.S.C. Section 2000E-5(b), which provides that charges shall not be made public by the Commission, that the Commission was precluded from filing a proof of claim in the bankruptcy case. And that the process set forth in Section F(1) of the statute including the process for going through conciliation before the Commission may bring a civil action also precluded the Commission from filing a proof of claim.

Neither counsel nor Ms. Malloy, who's also obviously an attorney for the EEOC, has been able to tell me whether indeed, the EEOC follows its practice generally in bankruptcy cases of not filing proofs of claim, even as a protective matter, until it has made a determination and commenced civil action. They state that they know nothing about how the EEOC deals with proofs of claim in Chapter 11 cases, except in respect of Ms. Malloy's own personal knowledge of this case. Which, of course, as a factual matter, begs the question since the claim here was filed only after the filing of the complaint in the Western District.

I've reviewed the statute, as well as the regulations, 29 C.F.R. 1600 et seq., and I believe based upon

that review, including the regulation specification of what must be set forth in a charge, that this requirement as set forth in -- or these requirements as set forth in 42 U.S.C. Section 2000E-5, does not preclude -- it would not reasonably be read to preclude the EEOC from filing a proof of claim in this case before the commencement of the District Court litigation. The EEOC has made no effort in the case to seek direction from the Court on this issue, but merely waited until after the litigation was filed to file the proof of claim. Given the definition of claim in the Bankruptcy Code and the importance of that definition, I believe that what Congress had in mind there was far broader than either the definition of charge or a civil action in 42 U.S.C. Section 2000E-5. And that to the extent it even constituted neglect, which I have serious doubts over, as opposed to a conscious decision, the neglect of the EEOC to file a proof of claim, until the date that it did, is not excusable. First, because of the asserted reason for the delay, being a unilateral legal interpretation, that frankly to me appears to have been come up with following Ms. Malloy's deposition this morning at oral argument, and to be contrary to her deposition. Secondly, because unlike the normal case, there would indeed be prejudice here. This is an unliquidated claim, it would be difficult to liquidate it. And it is contended, and even if it were not contended, the Court would take into account the fact that the liquidation of that

claim might involved, even on an estimation basis, a request for withdrawal of the reference, which would further delay the liquidation of the claim.

This Court has dealt with several requests to extend the bar date in these cases, and consistent with Midlantic, has generally taken a hard line with those requests and denied them. In addition to the affect of this claim itself on the EPCA cap and the premises by which the parties negotiated and voted on and the Court confirmed the Chapter 11 plan, therefore it appears to me that other claims late filed could come out of the woodwork as well at this point if the Court were to, under the present facts, grant the motion here. So the prejudice is two-fold. First, directly because it's not clear to me that this claim on its own would be liquidated in time to preclude an assertion of a default under the EPCA. And secondly, that such liquidation would necessarily result in an amount under the cap based on Mr. Unrou's declaration and deposition, in which he said that there were a handful, at least, of other unliquidated and partial liquidated claims, that were filed on a timely basis. And then secondly, the prejudice generally which is harder to quantify but is believed still exists, that opening the door by granting a motion on this shaky foundation, would encourage other late claimants to seek relief under 9006, or to seek reconsideration of the Court's prior orders denying them relief under Rule 9006.

Finally, I note here as an independent concern, the point I made some time ago, which is no individual, employee or former employee, all of whom I believe had adequate notice of the bar date, filed a claim that could be construed to assert this type of claim which the EEOC is asserting on behalf of such a class. By analogy, although I believe it's a very close analogy, therefore, I believe that the reluctance of courts in this district to certify classes for purposes of class proofs of claim under Bankruptcy Rule 7023 and Federal Rule 23, are instructive. As Chief Judge Bernstein has noted where the request for class certification comes after a bar date has been established and past, bankruptcy law considerations argue strongly against granting the motion for certification. See In re Musicland Holding Corporation, 362 B.R. 644, 654-6 (Bankr. S.D.N.Y. 2007) citing In re Jamesway Corporation, 1997 Bankr. Lexus 825 at page 10 (Bankr. S.D.N.Y. June 11, 1997) and In re Sacred Heart Hospital of Norristown, 177 B.R. 1624 (Bankr. E.D. P.A. 1995). See also Judge Rakoff's decision In re Ephedra Products Liability litigation; 329 B.R. 1 (S.D.N.Y 2005), in which Judge Rakoff examined the timing of the request for class certification and found that the late date of the request, in essence, arriving in connection with the impending hearing on confirmation of the debtors' plan, precluded the granting of the motion. I believe it would similarly undermine the bar date order to let in a claim on behalf of people who did not

file pre-petition claims for the very same claim before the bar date, under these particular circumstances at least.

So for those reasons, I'll deny the motion. Mr. Lyons, you can submit an order to that effect. You don't need to settle it but you should provide counsel for the EEOC with a copy when you give it to the Court. As I often do when I give a long bench ruling, I'll go over the transcript of this matter, not only for typos and mis-citations or incorrect spellings of names and case names, but also for my grammar and additional points that I may or may not want to make. But the gist of my ruling and the reasons for it won't change.

MR. LYONS: Thank you, Your Honor. I did clarify that proof of claim 16727 is actually the claim that was filed on behalf of the other pre-petition claimants. Claim number 16728 was actually the administrative expense request filed by Mr. Strauder.

THE COURT: And that's not objected to on the basis of timeliness.

MR. LYONS: Correct. So that one would clearly remain -- survive Your Honor's ruling. It's 16727 that would be disallowed and expunged.

THE COURT: Right. The pre-petition claim.

MR. LYONS: Correct.

THE COURT: Okay. All right.

MR. LYONS: Thank you, Your Honor.

(Proceedings concluded at 12:57 p.m.)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Esther Accardi, court approved transcriber(s), certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, except where, as indicated, the Court has modified its bench ruling.

Esther Accardi Digitally signed by Esther Accardi
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March 3, 2008

Signature of Transcriber Date

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